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UNICE VIEWS ON THE REVISION OF THE EU WASTE FRAMEWORK DIRECTIVE

European industry deems it essential to address the following issues in particular:

- In Article 1, the **objective of protecting natural resources** only comes second to the objective of reducing the environmental impacts of waste generation and management. However, both objectives should rank equal. This would better reflect the general objectives of the thematic strategies on resource use and on waste. UNICE supports the **waste hierarchy** as laid down in Article 1, provided it does not set a preference for one recovery option over another.
- UNICE supports the exclusion of unexcavated contaminated soil from the scope of the Waste Framework Directive. However, such exclusion does not solve the problem in a comprehensive manner. UNICE suggests modifying the term '**waste**' as laid down in Article 3 (a). Only **moveable substances and objects** should be considered waste.
- The Directive should not cover natural non-hazardous substances from agricultural production or **substances from forestry**. This should be included in Article 2 (3).
- UNICE supports the exclusion of animal carcasses and **animal by-products** from the scope of the Waste Framework Directive. However, the wording used for this exclusion at the end of the paragraph, "*biowaste that contains animal by-products*", referring to "by-products" which should never be considered as waste, could create some misunderstanding for other by-products. Hence, UNICE suggests replacing the word "animal by-products" with the word "animal material" and amending Article 2(2) as follows: "...biowaste that contains animal material".
- With regard to the central aspect of a **distinction between waste and non-waste materials**, UNICE insists on the need to lay down adequate criteria within the Directive text itself so as to provide the legal clarity and certainty which industry needs, thus considerably reducing the risk of legal disputes over this matter. As a consequence, UNICE does not support the establishment of legally non-binding guidelines for by-products. UNICE favours a clarification of the term 'to discard' as proposed in the UNICE Position of May 2005 and the UNICE proposal for amending the Waste Framework Directive of December 2001. Recent rulings of the European Court of Justice (C-9/00, C-235/02, C-416/02 and C-121/03) support the view of industry.

- UNICE generally supports the objective of establishing legal definitions of the terms '**recovery**' and '**disposal**'. This facilitates the distinction between these two forms of waste treatment which until now have caused so many problems in practice. In addition, a legal definition of the term 'recovery' makes it possible to determine the point when waste ceases to be waste. UNICE supports the concept of substitution as a key element of recovery (Article 5 (1)). The Commission apparently intends to limit the extensive recovery definition by introducing the concept of efficiency criteria (Article 5 (2)). UNICE rejects this concept as the comitology procedure linked to it could lead to classifying currently reliable recovery processes as disposal operations. In addition, the energy efficiency formula defined in Annex II R1 is not practical. Only very few installations in Europe, if any, would meet these requirements. UNICE suggests more detailed wording for the definition of 'recovery' as set out in the UNICE proposal of December 2001 and the UNICE position of May 2005. The key element of this definition is that the substance or object in question must undergo a **transformation process**. With regard to the term disposal, UNICE maintains the idea that the waste concerned is definitively removed from the economic circuit.
- The internal market is the strength of the EU and it should be extended to cover also waste management. The numerous Regulations and Directives will ensure equal criteria for waste management across the entire EU. The requirement in **Article 10** should be modified to be more indicative. The wording proposed by the Commission remains the same as the current wording in the Directive in force, which has resulted in restrictions on waste disposal in another Member State.
- UNICE welcomes the concept introduced in Article 11 in which a **definition of end-of-waste** is linked to setting **criteria for secondary raw materials**. However, the use of a comitology procedure in this context is rejected as it is non-transparent. Instead a standardisation procedure as described in previous UNICE positions is preferred. In addition, the implementing measures should not be limited to specific material or substance categories (Article 11 (1)). It is paramount to ensure a broad application which will eventually make it possible to incorporate criteria already in use including national standards, voluntary initiatives or quality and technical standards that are generally recognised and used throughout the industry in question. In any event, the existing standards, as actually applied by Member States, should be maintained until a specific Community rule is in place. This is essential in order to facilitate new recycling markets. For the same reason, the condition of an existing market (Article 11 (1) (b)) should be deleted.
- UNICE supports the definition of a **waste "producer"** as anyone whose activities also produce waste, in addition to its main valuable activities. Nevertheless the waste "producer" concept is often interpreted differently by the authorities in the Member States. The problem arises when a company gives another company the responsibility, on its behalf, for the waste-producing activities. It should be clarified that the commissioning company is not the producer of waste. This could be done simply by adding the word "materially" in the sentence ("anyone whose activities materially produce the waste"). For example, the sub-contractor on a construction site may be the physical waste producer rather than the client who has ordered the building or the main contractor/architect.

- **Article 25** introduces, as a new rule, the need for undertakings which collect and transport waste on a “professional basis” to register. This provision could be clarified. What do we mean by “professional basis”? Should an undertaking that transports 35 tonnes of dangerous waste once a month, be considered to be operating on a “professional basis” or could that undertaking be excluded from the registry? UNICE believes that a definition based on a precise amount of waste could be easier to apply. As an alternative, the need for registration could be limited to undertakings transporting waste produced by others. Furthermore, operators might encounter difficulties in applying such an obligation when waste is collected from households, by the seller of a replacement product, as in the case of the WEEE Directive. These operators should be exempted from registration.
- UNICE takes the view that there is no clear distinction between the **scope of the future Regulation on Chemicals (REACH)** and the substances regulated in the (revised) Waste Framework Directive. It must be ensured the materials are not subject to double regulation.

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