

Position Paper on the Revision of the Waste Framework Directive

BUSINESSEUROPE, the Confederation of European Business, is the voice of more than 20 million small, medium and large companies. Its members are 39 central industrial and employers' federations from 33 countries, working together to achieve growth and competitiveness in Europe.

The European business community supports the objective shared by the European institutions whereby the new Waste Framework Directive (WFD) should seek to promote the environmentally sound and cost-efficient recovery of wastes as a contribution to sustainable use of resources as well as to the security of supply of raw materials. We believe it essential that a fundamental approach to keeping material flows in the life cycle is developed at Community level. This requires a change in the perception of waste. Waste must be seen as a base for new resources and energy. This contributes to sustainable development and innovation.

It is also important to stress that waste legislation should not stray into the field of product regulation, especially as Community legislation on general product safety as well as on specific product aspects, including design, already exists (e.g.: Directive 2005/32/EC on ecodesign of energy-using products). Any legislation that includes product aspects should be based upon article 95 of the EC Treaty in order to avoid further fragmentation of the internal market, the major achievement of the EU

To be the basis of a modern European waste policy, the WFD should fully take into account the following key elements:

- Flexible application of the waste hierarchy in the Member States as a guiding principle, which is the best way to protect the environment.
- A pragmatic and enforceable way forward for waste stabilisation and prevention, without quantified targets and timetables, which would be counter-productive in a growing economy.
- A clear legal distinction between wastes and by-products in the text of the directive based on the criteria established by the European Court of Justice.
- Criteria for the end-of-waste status leading to more legal clarity and improving market conditions for secondary raw materials.
- A clear definition of "recovery" providing a distinction between recovery and disposal.
- Full application of the single market rules with regard to waste for recovery to ensure the establishment of a "recycling society".



- Avoidance of unenforceable provisions on producer responsibility. It is important to decouple product-design-related measures from waste management legislation to guarantee the functioning of the internal market.
- Both unexcavated contaminated soil and buildings (better fixed structures) and excavated uncontaminated soil should be excluded from the scope of the directive.
- Avoidance of new record-keeping obligations for producer of non-hazardous waste.

What follows is an outline of BUSINESSEUROPE's views on these most important issues for revision of the WFD. We would be happy to provide more detail on these and other matters under consideration.

1. WASTE HIERARCHY

BUSINESSEUROPE supports the inclusion of a waste hierarchy as a guide to achieve best practice. It can accept the current version under consideration. The hierarchy is not an exact wording in legal terms and should therefore serve as a guiding principle in waste policy rather than as a rule as such.

However, strict implementation of a five-step waste hierarchy is not always the most cost-efficient and environmentally effective solution. The rapid developments in waste management over the last two decades give reason to look at the waste hierarchy in a new perspective. Situations occur in which a deviation from the hierarchy leads to a better environmental outcome or an equal outcome at a lower cost. Industry needs more flexibility. In particular industry does not support the use of lifecycle assessments and cost-benefit analysis as compulsory/necessary criteria to deviate from the hierarchy. BUSINESSEUROPE believes that requirements to carry this out will result in administrative effort of no value to the environment. A lot of resources in the form of unnecessary consultant expertise and bureaucracy will be needed with the resultant expense. The results will vary with location as well as waste stream and will not provide similar answers throughout Europe. Instead, the use of lifecycle thinking should be promoted. This can be promoted through licence conditions as at present.

Governments should be encouraged to allow, without bias, all technically and environmentally sound waste recovery options, recognising that considerations change with time, location, economics and available technology. The choice of which recovery option to use should be determined by local circumstances, market forces, economic analysis and without excessive bureaucracy. BUSINESSEUROPE underlines that re-use may not always be the preferred option since adverse environmental effects could occur (e.g. in terms of energy efficiency).

In order to achieve this:

- It should be explicitly stated within the directive (i.e. within the articles, not the Recitals) that the hierarchy is a guiding principle, AND,
- The directive should not prescribe burdensome requirements that Member States must apply to justify any deviation from the steps within the hierarchy, AND,
- The directive should include a reference to taking economic considerations and local circumstances into account when determining choice of recovery option rather than mandating use of lifecycle analysis.

BUSINESSEUROPE supports the inclusion of the waste hierarchy as a guiding principle since flexibility is necessary when other options prove to be better environmental and more cost-effective solutions. In this respect, BUSINESSEUROPE calls on the EP to support article 11 and recital 28 of the common position. BUSINESSEUROPE does not support article 1, par. 2 and 3 of the EP's first reading report.

2. WASTE STABILISATION AND PREVENTION

Waste minimisation should be supported, but the setting of targets is risky and almost impossible to measure. As economic activity increases and production grows, more waste is produced even though material efficiency is improved and less waste is produced per unit of output. There are limitations because other legislation regarding safety or working conditions sometimes restrains prevention possibilities. The danger is that waste prevention and stabilisation targets will lead to a production limit in Europe and will subsequently speed the relocation of EU industry to other countries outside the EU. This is particularly evident for industry sectors that are still growing in Europe and whose activities may at some point result in more waste despite all possible minimisation measures taken.

There are certain realities that unfortunately cannot be avoided. The manufacturing of many industrial products will inevitably be linked with waste formation. It is possible that part of these wastes will not be directly eligible for recovery.

BUSINESSEUROPE asks EU institutions not to set quantified targets and timetables, for waste prevention and stabilisation. BUSINESSEUROPE therefore calls on the EP to remove article 7 from the EP's first reading report and article 26, par. 3 from the common position.

3. BY-PRODUCTS

The inclusion in the directive of a definition of by-products based on the European Court of Justice (ECJ) rulings is needed to provide legal clarity. It is important to indicate that such by-products are not waste. This will avoid by-products being disposed of as waste, and hence will promote efficient use of by-products instead of natural resources. It will then prevent unequal treatment of economic operators across the EU.

BUSINESSEUROPE welcomes the fact that both Council and the EP support the inclusion of a definition of by-products and the clarification that by-products do not fall under the definition of waste. We also agree that it should be possible to clarify for specific substances or objects the criteria laid down in the directive by adopting specific measures (art. 4 par. 2 of the common position). Whereas the EP suggests establishing environmental and quality criteria (art. 4 par. 2 of the EP text first reading), the common position only provides for measures if necessary, thereby avoiding heavy and burdensome rules without any benefit to the environment.

BUSINESSEUROPE supports the inclusion of a definition of by-products and the clarification that by-products do not fall under the definition of waste. We therefore call on the EP to confirm the text of article 4 of the common position.

4. END OF WASTE STATUS

Clarifying when waste ceases to be waste is one of most innovative and important issues of the directive. BUSINESSEUROPE welcomes that fact that both the Council and the EP support the inclusion of a mechanism for determining the end of waste in the directive. This leads to both more legal clarity and improves market conditions for secondary raw materials. Compared with the text adopted by the EP in first reading (art. 14) the text of the Council common position (art. 5) is more coherent. It provides a comprehensive approach, covering all potential secondary products, whereas the EP would unnecessarily limit the scope of application (“if appropriate”, art. 14 par. 2). Moreover, the decisions to be made are highly technical and require the expertise available from industry. The directive should include a mechanism for continuous and structured consultation with stakeholders, and particularly industry.

BUSINESSEUROPE supports the inclusion of a mechanism for determining the end of waste in the directive and calls for the text of the Council common position to be maintained. We recommend inclusion of a permanent consultation mechanism.

5. RECOVERY

Industry would like the revised WFD to contain a definition of recovery as a chain of processes or operations resulting in the final substitution of resources. Obviously, recovery operations should not negatively impact on human health and environment, nor negatively influence product safety, quality or functionality.

However, referring to the “principal result” of an operation as an element of the recovery definition (art. 3(14) of the common position) will not meet the objective of providing more legal certainty. This element should be replaced by the term “objective”.

BUSINESSEUROPE supports the inclusion of a definition of recovery suggesting the following wording:

“recovery” means any operation

- *the objective of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy and,*
- *which reduces the overall negative environmental impacts by using waste as a substitute for other resources*

6. SINGLE MARKET FOR WASTE

The WFD should reflect the single market principle while ensuring the environmentally sound treatment of wastes. The single market plays a key role when it comes to moving towards a recycling society.

However, the text of the Council common position has the effect of restricting the single market. The principles of self-sufficiency and proximity which under the current WFD apply for waste for disposal only would be extended to certain wastes for recovery. In order to protect their national market structures, Member States shall be entitled to prevent the import of incineration wastes for recovery (art. 14). In addition, the Council text allows differentiating the efficiency formula for energy recovery (annex 2, R1) according to local conditions (art. 35).

These considerations are not prompted by environmental concerns. The proposal merely seeks to protect or even strengthen national market structures by abolishing the single market. However, such national market structures are not in line with the objectives of the WFD.

Restricting the single market for wastes for recovery does not contribute to solving environmental problems. It merely jeopardises the competitiveness of environmentally advanced recycling and other recovery activities which contribute to the conservation of natural resources as well as to climate protection. The text of the common position would restrict waste recovery as well as the production and marketing of secondary raw materials in the EU, whereas it must be the aim to secure the supply with raw materials, also by encouraging the use of secondary raw materials.

It is also questionable whether the self-sufficiency for wastes for recovery would be legally admissible under the aspects of the free movement of goods and services and of European competition law. Provisions regulating markets in principle contravene European primary law.

It should be remembered that wastes for recovery are resources that displace virgin materials and are thus essential for resource efficiency. The economic exploitation of these materials may require, in a global economy, for them to be processed outside the EU. Such materials should not only benefit from the single market as stated above, but their export from the EU for good uses should also be accepted.

BUSINESSEUROPE believes that the single market is a sine qua non of open markets which contribute to the establishment of high European environmental standards and which provide incentives for innovation in waste recovery. Conversely, protecting national markets leads to distortions of the European waste recovery market without offering improved environmental performance. BUSINESSEUROPE calls on the EP to delete art. 14 par. 1 sub-par. 2 and par. 2, thereby confirming its position from the first reading.

7. PRODUCER RESPONSIBILITY AND DESIGN RELATED REQUIREMENTS

BUSINESSEUROPE is concerned about the proposal for including provisions on (extended) producer responsibility and product development and design in the WFD in its present form, since such provisions risk encouraging free-riding and a further disruption of the internal market, rather than fostering the necessary, better implementation of existing waste management legislation.

More particularly, BUSINESSEUROPE takes the view that the main parts of article 7 of the common position and article 5 of the EP's first reading report are in our view unenforceable and therefore arbitrary to EU environment (and energy) policy objectives and should be reformulated in the following respects:

- Provisions on “extended producer responsibility”, if any, should not result in making European society pay twice for the same service; in particular, producers should not be made responsible for financing aspects that are not under their control and which they can consequently not influence, i.e. the collection of waste from private households. Today, municipalities already charge consumers for their collection structures. Producer responsibility should, however, continue to start from agreed collection points onwards.

BUSINESSEUROPE therefore calls on the EP to support article 12 of the common position. We generally support the concept of “shared responsibility”, meaning that all participants along the supply chain from production to consumers need to accept their responsibility for environmental impacts of their activities (i.e.: local authorities, industry, recyclers, retailers, distributors and national governments). We call on the EP to take this into account in its second reading of the WFD.

- Overlapping requirements in multiple legislative initiatives are confusing, misleading and not delivering the environmental objectives. Overlaps of the WFD with other EU waste management legislation, such as directives 2002/96/EC on WEEE or 2000/53 on end-of-life vehicles, risks disturbing the ongoing implementation of these directives to the detriment of environment protection.

BUSINESSEUROPE consequently proposes that article 7.4 of the common position is modified to clarify that the WFD applies without prejudice to existing waste-stream-specific legislation.

- The proposed WFD also interferes with existing product-design-related legislation, and directive 2005/32/EC on ecodesign of energy-using products more particularly. Product-design-related provisions are in our view ill-placed in waste management legislation based upon article 175 of the EC Treaty, as they can easily result in at least 28 different measures on products in the different member states, which according to the EC Treaty are supposed to circulate freely in the EU internal market.

BUSINESSEUROPE fully supports article 7.3 of the common position. Article 7.2 of the common position and article 7(b) of the EP first reading report should not be included in the final waste directive. In addition, we encourage the EP to reconsider tabling amendments that would remove product design related measures from annex IV of the common position.

8. UNCONTAMINATED EXCAVATED MATERIALS AND CONTAMINATED SOIL

European industry is of the opinion that the directive should not cover uncontaminated excavated materials which can be used in their natural state whether on the same site or another site. With regard to uncontaminated excavated materials used on another site, this would lead to a larger environmental benefit. When regarded as waste, these materials frequently require additional handling, transport and administrative procedures. This will unnecessarily increase the environmental impact compared with the situation where these materials would not be regarded as waste.

In this respect, BUSINESSEUROPE fully supports article 2, par. 1, second indent of the EP's first reading report and calls on the EP to remove of recital 9 of the common position.

Furthermore, it is necessary to clarify that unexcavated contaminated soil does not fall under the definition of waste.

BUSINESSEUROPE therefore supports article 2, par. 1 indent (b) of the common position.

9. ADMINISTRATIVE BURDEN

The new article on 'recordkeeping' forms an extension to article 14 of the current waste directive and threatens to lead to an increase in administrative costs. The Council and EP proposals not only increase the group of undertakings and entrepreneurs that will fall under this obligation, but also the information requirements. The article gives Member States a great deal of freedom to impose additional information demands on entrepreneurs which can lead to divergent information and monitoring requirements in the internal market.

BUSINESSEUROPE believes that this is not in line with the EU Better Regulation Programme that aims to reduce the costs incurred by businesses for information obligations. Furthermore, although we do not reject all record-keeping obligations, we are of the opinion that waste streams that form no environmental risk, for instance due to the nature or volume of the waste, should be clearly excluded from these obligations.

We therefore call on the EP not to re-table article 42, par. 2, indent 4 of the EP's first reading report.

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