

28 November 2003

**UNICE COMMENTS ON THE COMMISSION COMMUNICATION OF  
27 MAY 2003 TOWARDS A THEMATIC STRATEGY ON THE PREVENTION  
AND RECYCLING OF WASTE**

UNICE welcomes the Commission's Communication. We would however like to stress the complex nature of the many issues developed in the paper and our belief that a traditional approach to discussions (large consultation meetings and written comments) is not sufficient. In view of the fact that both the Council and Parliament will still be discussing this issue during the first half of 2004, with Council aiming to adopt its position in June, we would like to see the Commission making full use of the time available until then. UNICE suggests that the dialogue is therefore organised like the debates on the Soil and Resources Thematic Strategies, i.e. with an Advisory Forum and Technical Working Groups on issues such as: Prevention, Recycling, Definitions and the Waste Framework Directive, Economic Instruments, Research.

**WASTE PREVENTION**

Prevention is broader than just end-of-pipe issues. The communication takes the waste phase as its starting point and only considers quantitative (amount) and qualitative (hazardous) prevention. Measures to prevent waste cannot be seen to be independent from the use of resources and IPP. The latter provides the appropriate framework/tools within which the objectives of the Thematic Strategies will be achieved.

Prevention also covers materials which are classified as waste, but that are recovered and not disposed of. These materials are often by-products emerging from manufacturing activities and which are used as raw materials by other industrial sectors. On this view, waste prevention measures based on volume could also endanger production patterns, without achieving any environmental protection. Therefore setting general targets based on volume for waste prevention is not an appropriate tool.

Waste is an unwanted cost factor for enterprises. Moreover, the surplus raw material that is not directly converted into products is an even bigger cost factor. These costs have driven enterprises to work hard and to innovate in this field. Minimisation of these costs is an important competitiveness factor and, at the same time, an effective driving instrument, particularly in basic industries that have to use a large amount of raw materials and energy.

An example lies with the packaging legislation: companies have been working for more than ten years, mainly for economic reasons, on efficient actions for reducing the weight of packaging put on the market. Consequently, the amount of packaging being used has stopped increasing or indeed fallen, in a number of Member States, whilst the number of packaged items has increased with the general growth in GDP. Currently packaging is either very close to reaching its technologically feasible reduction limit or has already reached it. In addition, the amount of packaging used is dictated by user needs and demographics. Therefore, setting quantified reduction targets that would force a further reduction of packaging is likely to increase packed product damage, thereby resulting in an increase in product wastage.

This would have a far higher negative impact on the environment than the much smaller benefit from any reduction in packaging used. In addition, prevention considered on the basis of quantified reduction targets might not take into account improvement of the European economy and/or the fact that reduction achievements depend on technological improvements.

**Target setting** - UNICE underlines that, for industrial waste prevention, target setting is hardly practical as the starting points vary from one enterprise and from one sector to another. General targets would turn out to be as inefficient as before. Where there is still potential for further prevention and minimisation of waste, a workable means to accelerate progress is to promote innovation in material and waste management. This could be achieved in the framework of the EU action plan "More research in Europe". The use of voluntary approaches and internal waste management plans could serve as a good basis for improvements.

**IPP and Resources Strategies** - The IPP Strategy and the Resources Thematic Strategy integrate all aspects relating to quantitative and qualitative prevention of waste. Therefore it is crucial that the IPP, Resources and Waste Strategies are linked in a coherent and efficient way, in order to facilitate their implementation by industry.

## RECYCLING

UNICE shares the Commission's view that recycling is easier to manage than prevention.

For industry it is important that producers can use alternative raw materials as feedstock in their production processes or on a building site, provided that they correspond to the required raw material or product standards, without an unnecessary administrative and technical burden.

**Landfill taxes** - The Commission has the responsibility to ensure full and harmonised implementation of the Landfill Directive, which should guarantee a levelling-out of treatment costs across Europe. As a consequence, this should prevent certain shipments of waste. Harmonised taxation at EU level is not currently a possibility under the Treaty, therefore UNICE does not see it as an option. UNICE disagrees with the use of landfill bans.

**Producer/shared responsibility** - Producer responsibility will be applied for waste electronic and electric equipment and for "end-of-life vehicles". At EU level, this is a new situation and so far there is no experience on how it is going to work. The handling of historical waste and free-rider products are issues that might pose problems for management of the system. National mechanisms have proved to be successful in some cases but there are examples of harmful impacts on competition. One of the original aims of systems based on producer responsibility was to create incentives for eco-design by manufacturers. In any case, UNICE believes that responsibility for waste collection and recovery should be shared among all stakeholders: from producers via converters and distributors through to consumers, also involving municipalities when they are in charge of collection of municipal waste.

**Tradable certificates** - The concept of tradable certificates suggested by the Commission raises a number of questions for which there is currently a lack of basic experience to answer. In particular it must be recognised that production plants generating waste in Europe are numbered in millions and they could therefore all be potentially involved in the tradable certificate system. However, it is hard to see how we could ensure effective control in order to avoid distortion of competition across this number of plants.

**Material approach** - A material-oriented approach in the setting of recycling targets is an interesting but complicated question to which it is so far impossible to give a single, clear, effective answer for all materials.

On the one hand, it should be possible to approach the problem on a material basis for certain materials, such as paper and glass, when these materials are the product itself.

On the other hand, for complex goods made of more than one material, the present system of a product-based approach seems to ensure the most efficient waste management. Indeed, as many industrial wastes are composed of many materials, it would be complex to set and evaluate the targets per material. Furthermore, considerable waste-stream-specific legislation already exists. It is necessary to wait until this legislation has been fully implemented before bringing forward new legislative initiatives. Therefore, UNICE insists that no material-oriented targets, binding or indicative, should be established where functioning secondary raw material markets exist that ensure sustainable waste management.

Cost-benefit and eco-efficiency considerations can help to focus on the relevant waste-streams and the sensible mix of recovery options. We must underline that different materials may require different measures to improve their recycling ratio. Many materials require, for instance, separate collection. If the demand of secondary raw materials exists, ensuring separate collection would be enough to promote higher rates for recycling.

The requirement for minimum recycled content in a product comes up from time to time, due to the opinion that success or failure of any recycling policy depends on the existence of a sound market for secondary raw materials.

Many producers use recycled material as supplementary raw material, but the choice of raw materials depends on the dominant situation, e.g. recycled material availability, market demand, suitability of recycled material in production, etc.

A mandatory obligation to use recycled materials would unavoidably create trade barriers or distortions of competition for those manufacturers that do not have availability of those materials in their countries. In that case, an obligation would imply the need to import such raw materials that would more naturally be used in the country of emergence.

That's why UNICE objects to any plans to introduce European regulations for minimum recycled content in new product manufacturing.

**Energy recovery** - UNICE highlights that all different means of recovery should be recognised as equally acceptable. The use of alternative fuels derived from wastes saves natural resources and reduces the amount of waste to a small fraction of the original. With the adaptation of new EU legislation for waste (co-)incineration, emissions will be controlled and limited to safe levels. UNICE believes it is important to address energy recovery from waste as one of the tools which contributes to a balanced and efficient waste management plan and it should therefore be included in this recycling debate.

**PAYT** - UNICE welcomes the Commission's considerations on Pay As You Throw (PAYT). We believe that PAYT can improve citizens' involvement in separate collection and could bring a higher level of recycling. The main obstacle to the development of this approach, based on the "polluter pays" principle, comes from local authorities, which mostly operate in a monopoly regime and are not motivated to modify their collection and taxation methods. UNICE believes that the Commission should rapidly promote a programme in order to spread the principle of PAYT with the involvement of local authorities. The actual schemes however are subject to the subsidiarity principle and the final choice to use them and how should be left to the Member State.

**Extension of IPPC to all recovery activities** - UNICE thinks that it would be inappropriate to extend IPPC procedures to all recovery activities: the IPPC directive defines an integrated approach to the environmental impact of industrial activities (air, water, soil) for which a single authorisation is required instead of the several we used to need. In the case of waste recovery,

usually there is not such a spread of environmental impacts. For that reason, UNICE believes that the extension of IPPC to all the recovery operations appears to go beyond the aim of the IPPC directive and will have the result of discouraging recovery, against the environmental objectives of the strategy.

### ***Waste definition***

The waste definition has for long been the subject of intensive debate between industry and public authorities in Member States and at EU level. UNICE appreciates that the Commission has taken this issue up in the Communication and looks forward to discussions on this extremely important issue.

The Council, the European Parliament and the European Court of Justice are all well aware of the need for a change.

European industry has been working for years to change or at least to clarify the guidance for the waste framework directive definition.

The fundamental question is the interpretation of the word *discard*. The intensity of Court rulings shows that the definition or its interpretation should be improved. The questions posed in the Communication are crucial and should be evaluated very carefully. UNICE fully agrees with the Commission that objective criteria should be established to determine:

- a. *When a specific material or object becomes waste*
- b. *When a given waste should no longer be considered waste.*

UNICE has proposed to the Commission that waste discarding does not take place when substances, objects, products including by-products, intermediate products or secondary products are suitable in their existing form, without the threat of waste-related environmental impact, to be put to further use in the economic circuit. That means that such materials should not be classified as wastes. Secondly, UNICE proposes that wastes cease to be wastes after they have undergone treatment to be suitable for further use in another process or construction activities. In order to be classified as products, these materials must comply with European or international specifications or standards, where commonly agreed environmental aspects have been considered (e.g. EFR-EUROFER Steel Scrap Specifications; CEN standards; ISO Standards), noting that these environmental aspects can, if necessary, need further elaboration on a case-by-case basis.

The formal UNICE proposal is annexed.

According to UNICE, substances and objects extracted from waste in the course of recovery processes should not be subject to obligations and costs under waste legislation for longer than it is necessary to protect the environment. Disproportionate, excessive and unnecessary environmental legislation that interferes with access to industrial secondary raw materials, now nearing half of all the materials used by industry, raises doubt about the legislator's real intentions: a clear distinction between environmental protection and trade protectionism is advisable to increase acceptance of environmental legislation as a whole.

UNICE supports many of the Commission's arguments, although it contends that the absolute economic cost of compliance is the determining factor for deciding whether or not there is a need to distinguish when a waste ceases to be waste, or if a given material should be considered waste. UNICE considers that the problem of the definition of waste should be considered under three aspects: economic, legal and commercial.

As far as economic aspects are concerned, should the Commission believe they are fundamental, it could carry out a study in order to compare the costs between waste and non-waste materials, in particular: administrative costs, logistic costs (storage and transport under the waste legislation), permit procedures, financial guarantees for waste management, compliance of emission targets (stricter for waste than for non-waste materials), compliance of Environment Impact Assessment and IPPC directives, etc.

Under the legal point of view, the Commission seems to believe that the European Court of Justice jurisprudence is sufficient to solve the waste/non-waste issue. On the contrary, UNICE underlines the great discrepancies between the Member States and the Commission on this matter, which lead to uneven application of waste legislation in the EU. This situation creates distortions in the internal market, affects competition rules and behaviours and leads to uncertainty for enterprises. It should be the role of institutions to clarify rules and behaviours within the internal market: with this in mind, the Council and the Parliament have more than once invited the Commission to act.

Even authorities often have doubts about the nature of materials (waste or non-waste) because of lack of precise guidelines. In case of doubt, they usually decide "to be wrong on the right side" by constantly choosing to consider these materials as waste, with the consequent sanctions on companies.

Finally, on the commercial side, there are cases in which the classification of materials, co/by-products or objects as "waste" raises problems for their recovery and especially for their recycling. Indeed, for many industrial sectors, the image of their commercial products is a very important issue. When falling under the denomination of "waste", their materials/by-products/objects often suffer from a bad image, whereas they still have an economic value and can be brought back into the chain of utility. UNICE therefore believes that waste should be classified with respect to its future "application" and not with regard to its original use. We hope that this Thematic Strategy will be the opportunity to restore public acceptance and confidence with regard to the use of those materials/by-products/objects.

UNICE asks the Commission to urgently develop an Action Plan in order to define, during the first months of the next year, uniform criteria for the qualification of waste/non-waste materials at EU level. There should be a process that goes in parallel with development of the Recycling Strategy.

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