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POSITION PAPER ON THE REVISION OF THE EU WASTE FRAMEWORK DIRECTIVE

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

BUSINESSEUROPE has considerable expertise in waste matters. Its members include both waste producing businesses and the waste management industry that arranges recycling recovery and disposal of waste.

BUSINESSEUROPE believes 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.

What follows is an outline of the BUSINESSEUROPE view on the most important issues about the revision of the Waste Framework Directive. Of course, BUSINESSEUROPE can provide more detail on these as well as views on other matters under consideration, if required.

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.

Strict implementation of a 5-step waste hierarchy however is not always the most cost and environment effective solution. The rapid developments in waste management over the last two decades give reason to put the waste hierarchy in 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 life-cycle 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 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 not provide similar answers throughout Europe. Instead the use of life cycle 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, recognizing 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.: energy efficiency).

In order to achieve this:

- It should be explicitly stated within the Directive (i.e. within the Articles, not the Recital) 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 reference to taking economic considerations and local circumstances into account when determining choice of recovery option rather than mandating use of Life Cycle Analysis.

BUSINESSEUROPE supports the inclusion of the Waste Hierarchy only as a guiding principle since the flexibility is necessary when other options prove better environmental and cost effective solutions.

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 restrain prevention possibilities. The danger is that waste prevention and stabilisation targets will lead to a production limit in Europe and will subsequently speed the delocalisation of EU industry to other countries outside the EU. This is particularly evident for industry sectors that still grow in Europe and whose activities may result as of a certain point 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 directly have a certain resort for recovery.

BUSINESSEUROPE asks EU institutions not to form numerical and scheduled targets and not to set such for waste prevention and stabilisation. Such targets would be counter-productive in a growing economy as their enforcement would be an incentive to manufacture outside the EU.



3. RECOVERY AND WASTE-TO-ENERGY

Industry supports that the revised Waste Framework Directive should contain a definition of recovery based on substitution of resources. Obviously, recovery operations should not negatively impact human health and environment, nor negatively influence product safety, quality or functionality. However, waste legislation should not tread into the field of product legislation either, especially as Community legislation on general product safety as well as on specific product aspects, including design, already exist (e.g.: Directive 2005/32/EC on Eco Design of Energy Using Products). Any waste legislation that includes product aspects must 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.

Moreover, the distinction between recovery and disposal is a central component of the revised Waste Framework Directive. It is therefore essential that the classification of waste incineration plants is clarified in the context of the current revision.

BUSINESSEUROPE supports the inclusion of a definition of recovery and particularly the distinction between recovery and disposal. However, waste legislation should not tread into the field of product legislation, as this risks interfering with existing EU Directives.

4. 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 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.

The proposed alternative of a Commission's Communication drawing legally non-binding guidelines to characterise by-products will not provide this legal clarity. Indeed, the meaning of discard and by-product will continue to be decided by individual Member States on a case by case basis rather than setting a uniform and legally binding framework in place for all Member States. Materials produced as by-products of one industrial process that can be used by other industrial processes as raw materials may still be classified as waste for many years to come. This will mean that the twin goals of efficient use of resources and EU improved industrial competitiveness will remain un-realised.

BUSINESSEUROPE supports the inclusion of a definition of by-products and the clarification that by-products do not fall under the definition of waste.



5. END OF WASTE STATUS

Article 11 (end of waste) of the Commission's Proposal is one of most innovative and important issues of the Directive. The article describes the procedure to follow in order to harmonise the hundreds of different criteria to establish when the recovery process of a waste is finished and the material obtained goes out of the scope of the Waste Directive. It is a necessary measure both for the environment and for the market. However, the decisions to be made are highly technical and require the expertise available from industry. The proposal 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, but would like it to include a permanent consultation mechanism, such as proposed in EP amendment 80.

6. PRINCIPLES OF SELF-SUFFICIENCY AND PROXIMITY

In the European Commission proposal, the principles of proximity and self-sufficiency only apply to disposal operations. Under the Waste Shipment Regulation, Member States can object (under certain conditions) to transboundary waste transport destined for disposal, not for recovery.

Industry strongly opposes the extension of the principles of proximity and self-sufficiency to recovery operations, including the cases where the incineration of (mixed) municipal waste is considered as recovery as this will introduce serious distortions in the operations in the internal market.

BUSINESSEUROPE opposes the extension of the principles of self-sufficiency and proximity to recovery operations as it would introduce distortions in the internal market.

7. EXTENDED PRODUCER RESPONSIBILITY

Industry opposes the new article 3 B (AM 35 and AM 8) as well as the Article 8 (cost) and Article 9 (waste management responsibilities) as these amendments put all waste responsibility to the producers. As all waste in general is somehow generated by any product, such a broad responsibility will lead to the situation, that the public institutions will put all financial liabilities to the producer. However, municipalities already charge private consumers for such collection structures. Double payment must be avoided. To achieve a continuous improvement of products and their design, producer responsibility should start from designated collection points onward.

The "first mile" of collection should be shared among other stakeholders (municipalities, retailers) who have influential power on the respective step in the chain. Responsibilities of importers of a product have been overlooked and thereby put European product manufacturers at disadvantage against their non-EU competitors.



This amendment concerns many other areas of policy and legislation, and therefore the Waste Framework Directive can deal with this subject only as a non-legally binding recommendation or the WFD is not the appropriate place for it. The inclusion of producer responsibility at a horizontal level will not be enforceable, is overreaching and inappropriate in a framework directive.

Furthermore, the scope of producer responsibility should not be defined in the Waste Framework Directive (WFD), as it would lead to confusion and create double and overlapping requirements with existing daughter directives (P&PWD, WEEE, ELV, batteries) and other legislation. Enshrining this principle horizontally in the proposed WFD is an error because it cannot be enforced. It would make an undefined number of economic actors responsible for their “waste products”. Duplicated legislation would leave it unclear what economic operator would be responsible for doing what and for which product, thereby creating enormous room for free riding. Additionally, there could be at least 28 different ways of applying the horizontal producer responsibility principle in the EU, since amendment 35 obliges the Commission and Member States to make producers/importers responsible in a directive based upon article 175 of the EC Treaty.

Business therefore rejects Extended Producer Responsibility and supports Shared Responsibility: all participants along the supply chain from production to consumers need to accept their responsibility for environmental impacts of their activities. Shared Responsibility means:

- consumers maintain freedom of choice and sorts at or near their home
- local authorities collect, sort and continuously communicate to consumers
- industry when designing products, considers the products’ end of life cycle eased for re-use and recovery and recycling from a life cycle perspective
- recyclers to ensure cost effective while environmentally sound waste treatment
- retailers and distributors take their responsibilities where necessary
- national governments set up legal frameworks ensuring participation by all parties involved and provide for infrastructure build up and carry out proper enforcement activities.

Current Extended Producer Responsibility legislation (WEEE, ELV or batteries) is very costly and first needs to prove its environmental and economic benefits prior to discussing an extension of present obligations on those sectors or expanding Producer Responsibility policies to other products and categories. The EC indicated that product based Producer Responsibility has served its purpose and should be properly implemented prior to evaluating further measures in this area.

BUSINESSEUROPE opposes the inclusion of extended producer responsibility at a horizontal level as it will put all the responsibility and financial liabilities to the producers. Furthermore, as this amendment concerns many other areas and legislation, it would create double requirements and could not be enforced.

Therefore BUSINESSEUROPE supports Shared Responsibility for environmental impacts all along the supply chain (local authorities, industry, recyclers, retailers and national governments).



8. UNCONTAMINATED EXCAVATED MATERIALS AND CONTAMINATED SOIL

Industry welcomes the request of European Parliament to state that the Directive shall not cover uncontaminated excavated materials which can be used in their natural state whether on the same site or in another one.

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

BUSINESSEUROPE would like to exclude from the scope of the Directive also uncontaminated excavated materials used on another site as this would lead to a real environmental benefit.

BUSINESSEUROPE supports the clarification that unexcavated contaminated soil and buildings do not fall under the definition of waste but recommends extending it to structures also.
