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STATEMENT OF THE COUNCIL'S REASONS

Subject : Common Position adopted by the Council on 20 December 2007 with a view to the adoption of a Directive of the European Parliament and of the Council on waste and repealing certain Directives

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. The Commission forwarded to Council on 26 December 2005 a proposal for a Directive of the European Parliament and of the Council on waste.¹ The proposal is based on Article 175(1) of the Treaty.
2. The European Parliament adopted its first-reading Opinion on 13 February 2007². The Economic and Social Committee and the Committee of the Regions delivered their Opinions on 19 June and 14 June 2006 respectively³.
3. On 20 December 2007, the Council adopted its common position in accordance with Article 251 of the Treaty.

II. OBJECTIVES

The objectives of the draft Directive are to:

- simplify and modernise the current legislation,
- implement a more ambitious and more effective waste-prevention policy,
- encourage the re-use and recycling of waste.

The draft Directive provides for:

- the introduction of an environmental objective,
- clarification of the notions of recovery and disposal,
- clarification of the conditions for mixing hazardous waste,
- the introduction of a procedure to clarify when a waste ceases to be a waste for selected categories of waste,

¹ OJ C

² 6242/07.

³ OJ C .

- a procedure to establish technical minimum standards for a number of waste management operations,
- a new requirement to develop national waste prevention programmes.

The proposal takes the form of a revision of the waste framework Directive (2006/12/EC). It integrates the Directive on hazardous waste (91/689/EEC) and the specific collection obligation of the Directive on waste oils (75/439/EEC); these Directives are thus to be repealed.

III. ANALYSIS OF THE COMMON POSITION

1. General

In its Plenary vote on 13 February 2007 the European Parliament adopted 120 amendments (subsequently merged into 104 amendments). The Council's common position incorporates several of them totally, in part or in principle, by means of similar wording. In particular, it includes modifications to the Commission's original proposal that will tighten the application of the waste hierarchy, that specifically address the issues of bio-waste and waste oils, and foresee the concept of extended producer responsibility to encourage waste prevention and recovery. In relation to the definition of waste and the provisions originally devoted to *secondary products*, provisions are introduced in order to determine, on the one hand, substances or objects that may be regarded as *by-products* and not as waste if complying with specific criteria and measures and, on the other hand, to determine certain specified waste which may reach an *end-of-waste* status, according to specific conditions, resulting in substances or objects which can be placed on the market in compliance with the rules applicable to products and substances.

The common position also includes other changes, not foreseen by the European Parliament, which address a number of concerns expressed by the Member States in the course of the negotiations.

The Commission has accepted the common position agreed by the Council.

2. European Parliament Amendments

The Council:

- a) introduced in the common position 55 amendments in full, in part or in principle, as follows:

Recitals:

Amendment 1 and Amendment 4 on objectives have been taken over in part in Recitals 1 and 6, notably in connection with the waste hierarchy and the reference to the conservation of natural resources.

Amendment 5 on the need for a definition of "re-use" has been taken up in part (Recitals 13 and 16). The common position also foresees a further definition for "preparing for re-use" in order to facilitate the distinction between prevention and recovery operations, i.e. between re-use of products or components which are not waste (subject to "re-use", to prevent waste) and the re-use of products or components that have become waste (subject to "preparing for re-use", a recovery operation).

Amendment 6 on the need to clarify the definitions of recovery and disposal is partly taken on board by Recital 17 including a reference to the benefits of recovery operations to human health.

Amendment 7 on the need to clarify the definition of waste, is covered in part and in substance by Recital 20 and Articles 4 and 5 of the common position.

Amendment 8 on the polluter-pays principle and on producer responsibility is taken over in Recitals 24 and 25 of the common position.

Amendment 13 on waste oils is taken on board, in part and in spirit, by Recital 40 and Article 18. While the common position foresees the withdrawal of Directive 75/439/EEC on waste oils, Article 18 has been considerably developed and allows, in particular, Member States to maintain regeneration as a national priority.

Amendment 168 on the powers conferred on the Commission is partly covered in Recitals 42 and 43 although the scope for applying the new comitology procedure is wider in the common position.

Articles:

Amendment 101-14 on the subject matter and on the waste hierarchy are mostly covered in Article 1 and Article 11, coupled with Recitals 27 and 28. The common position, however, differs somewhat from this Amendment in that it considers, in particular, that subsidiarity should apply as regards procedures for departing from the hierarchy for certain waste streams.

Amendment 15-134-102-123-126 on exclusions from the scope of the Directive is partly covered in Article 2 as regards uncontaminated soil and other naturally-occurring material used for the purposes of construction on the site from which it was excavated, animal by-products (intended for uses that are not considered waste operations), non-hazardous sediments (relocated inside surface waters), the reference to further Commission proposals (Article 2 (4)), but not as regards the addition of a reference to sewage sludge used in agriculture.

Amendment 19 adding a definition of "prevention" is taken up in Article 3(11); actions related to the prevention of risks during waste management operations are not included as such, however, given that this definition should only concern measures taken before a substance, material or product has become a waste.

Amendment 20 on the definition of "re-use" can be found in principle in Article 3(12) as far as this definition now clearly relates to products or components that are not waste which are used again for the same purpose for which they were conceived.

Amendment 21 on the definition of "recycling" is covered in substance by Article 3(16).

Amendment 23 on the definition of "waste oils" is incorporated in principle in Article 3(3) covering all industrial waste oils and any mineral or synthetic lubrication oil.

Amendment 24 on the definition of "treatment" is incorporated in Article 3(13), which should be read jointly with Annexes I and II on disposal and recovery operations. In these Annexes the explanatory notes have been added to clarify the situation in respect to interim/preparatory operations.

Amendment 25 on the definition of "disposal" is taken up in part and in substance by Article 3(18). The more operational part of the proposed definition, on the need for disposal operations to give a high priority to the protection of human health and the environment, is addressed in Article 10 (Protection of human health and the environment) and Article 11 (Waste hierarchy) of the common position.

Amendments 27, 28, 30, 31 and 34 suggesting definitions of "dealer", "broker", "bio-waste", "best available techniques" and "regeneration" are integrated in Article 3 paragraphs (7), (8), (4), (19) and (17) respectively.

Amendment 107-121 on the distinction between by-products and waste is covered in part and in substance by Article 4 on by-products, to be read in conjunction with Recital 20 (first indent).

Amendment 35 on producer responsibility is taken up in part and in substance by Article 7 of the common position although the latter is not obligatory for Member States and does not provide for a follow-up procedure on its implementation. General reporting obligations and follow-up by the Commission are foreseen in Article 34 of the common position.

Amendment 169-36 on the list of waste is partly covered in Article 6, which now makes specific reference to Commission Decision 2000/532/EC and to the regulatory procedure with scrutiny for adapting the list in question. The common position does not follow the Amendment on other aspects; in particular, it is foreseen that the list should be binding only as regards the determination of hazardous waste.

Amendment 38-108-157-140-141 on recovery is partly taken on board. In particular: paragraph 1 is covered in Article 8(1) (reference to the objectives and to the waste hierarchy) and in Article 3(14) on the definition of recovery; paragraph 2 is taken up to a certain extent in Article 24 on technical minimum standards, specifying that the Commission may, where there is evidence that a benefit in terms of protection of human health and the environment would be gained, adopt technical minimum standards for treatment activities (recovery and disposal) taking into account *inter-alia* best available techniques; paragraph 2b is covered partly by Annex IV on examples of waste prevention measures (for the waste prevention programmes referred to in Article 26) as regards economic instruments, procurement criteria and accredited re-use and repair networks.

As regards paragraph 2d on high-quality recycling, a reference to separate collection has been added in Article 8(2) while the existing obligation for separate collection of hazardous waste and waste oils is maintained in Articles 15 to 18. Other parts of this Amendment, notably where EU-level targets for re-use and recycling are established, have not been taken on board because they were considered unrealistic given the existing data gaps and/or premature.

Finally, the modifications related to the amendments to Annex II on recovery operations have not been taken on board because this Annex (as well as Annex I) may not be modified unilaterally, given the EU's international obligations in the framework of the OECD ⁴ and the Basel Convention ⁵.

Amendment 39-158 on disposal is partly taken on board in Article 9 (reference to Article 8(1)), in Annex I, where a note has been added clarifying that disposal operation D11 is prohibited by EU legislation and international conventions, and in Recital 19 on disposal operation D 7 on release to seas and oceans including sea-bed insertion.

Amendment 40 is partly covered by Article 10 on protection of human health and the environment (introductory sentence).

⁴ Decision C(2001)107 Final of the EOCD Council concerning the revision of Decision C(92)39/Final on the control of trans-boundary movements of waste destined for recovery operations.

⁵ Basel Convention of 22 March 1989 on the control of trans-boundary movements of hazardous waste and their disposal.

Amendment 41 on requirements for waste recovery and disposal and for end-of-waste status is covered by Article 24 on technical minimum standards (adoption by the Commission *via* the Committee) and in part and in principle by Article 22(1) on conditions for exemptions (laid down by the Member States for recovery operations and for certain disposal operations of non-hazardous waste at the place of production) and by Article 5 on end-of-waste status. The common position, however, does not take up the notion of best available waste management techniques and differs from the Amendment on the procedure to be used (comitology rather than approval of individual Directives).

Amendment 43 is taken up in substance by Article 13(1) on responsibility and more precisions are given in Article 13(2)(new) on the allocation of responsibility for waste management in case of preliminary treatment operations.

Amendment 44 is taken up in substance by Article 12 on costs.

Amendment 45 is partly covered by Article 5 on end-of-waste, coupled with Recital 20 (second indent) outlining the possible categories of waste for which "end-of-waste" criteria should be developed. As above, the common position differs from the Amendment, in particular, as regards the procedure to be used for the development of such criteria.

Amendments 46, 131 and 47 on the dilution and mixing of hazardous waste and on hazardous waste produced by households are taken over in part and in principle by Articles 15(1), 15(2) and 17 respectively.

Amendment 56 on waste oils is taken up in substance by Article 18, although the common position foresees, in Article 38, that the EU-wide priority for regeneration will be repealed with Directive 75/439/EEC.

Amendment 112-138 on the introduction of a new chapter on bio-waste is covered in part and in principle by Article 19 coupled with Recital 32. The development of specifications and criteria for compost is also foreseen in Recital 20, second indent, on end-of-waste. The common position, however, differs on the nature of the requirements foreseen, for example on separate collection and on treatment prior to spreading on land.

Amendment 59 on permits is covered in substance by Article 20(5).

Amendment 60 on minimum standards for permits is taken up in part and in principle by Article 24, although the common position differs from the Amendment as regards the procedure to be used for the development of such standards (comitology rather than approval of individual Directives).

Amendments 62 and 64 on registration requirements for establishments or undertakings which collect or transport waste on a professional basis are covered in part by Article 22, by Recital 33 and by Article 24(2) (minimum standards for activities which require registration).

Amendment 66 on the reference to the hierarchy and to guidelines in relation to plans and programmes is taken up in part by Articles 25(2) and 26(5), while Amendments 67 and 151 on measures to prevent shipment of waste are addressed in Recital 36 coupled with Article 14(1).

Amendment 69 on the waste prevention programmes is taken over in part and in principle by Articles 26 and 28, although the common position does not support the introduction of target dates for stabilising and reducing the generation of waste as indicated in the Amendment.

Amendment 71 on the regular evaluation of waste prevention programmes is covered partly by Article 27, although the common position indicates a periodicity of six years (instead of five) and does not foresee the involvement of the European Environment Agency in such evaluations.

Amendment 115 on reports from Member States and reviews by the Commission is partly taken up in Article 34.

Amendment 173 on adaptation of the Annexes III and IV to scientific and technical progress is partly taken up in Article 35, which indicates that this adaptation will take place in accordance with the regulatory procedure with scrutiny. However, the common position considers that this process should concern all the Annexes to the Directive.

Amendment 77 on sanctions for non-compliance is largely addressed by Article 33 on enforcement and sanctions coupled with Article 37(2) on transposition.

Amendment 78 on the new regulatory procedure with scrutiny is incorporated in Article 36(2).

Annexes:

Amendments 81 and 82 on certain disposal operations are covered in principle by Recital 19 (on releases into seas/oceans including sea-bed insertion) and in Annex I first asterisk (on incineration at sea).

Amendment 86 is partly taken up in Annex II, third asterisk (recycling of inorganic construction materials).

Amendment 89 on Annex IIa (new) listing applications for which wastes can be used as a secondary product, material or substance is addressed to a limited extent in Recital 20 second indent, listing the possible categories of waste for which "end-of-waste" specifications and criteria should be developed, together with Article 5 on "end-of-waste" status, specifying the conditions and further criteria applicable, to be developed in accordance with the regulatory procedure with scrutiny.

Amendment 90 on the properties of hazardous waste is introduced into Annex IV (H14 and H15) and Amendment 94 is introduced in Annex IV as such.

(b) did not include 49 amendments in the common position.

With respect to Amendments 2, 3, 153, 9, 10, 12, 103, 17, 127, 26, 29, 32, 37, 109, 48 and 170, 50, 171, 51 and 172, 52, 53, 54, 98 and 113, 58, 61, 161, 188, 65, 68, 70, 72, 79, 80, 83, 84, 85, 87, 88, 91, 93, the Council followed the position expressed by the Commission.

In relation to Amendments 11, 104, 33, 49, 63, 74, 92, 95, 96, 97, accepted in part or in principle by the Commission but not included in the common position, the following considerations can be made:

Amendment 11 introducing a new recital on hazardous waste (to replace Recital 19 of the Commission proposal) focuses in particular on inappropriate management, the need for specific and dedicated treatment modalities including traceability, and on safety and qualification of operators. While not disagreeing in principle, the Council decided not to take it up because it constitutes a premise to Amendments 50, 51 and 172, 52, 53, 54, 58, 161, 188 to the Articles, which were not accepted by the Commission and the Council and thus not integrated in the common position.

Amendment 104 on the definition of "separate collection" was not taken over because Article 8(2), containing a provision on separate collection, describes this term adequately.

Amendment 33 on the definition of "cleaning" was not introduced in order to avoid redundancy with the definition of "preparing for re-use" applicable to products or components of products that have become waste.

Amendment 49 on the list of waste was not taken on board, the Council preferring to maintain the status-quo as regards the elements to be taken into account for compiling the list, which is now clearly referred to in Article 6 as the list established by Commission Decision 2000/532/EC, as suggested by the European Parliament.

Amendment 63 on minimising bureaucracy concerning registration, was not taken up because this point falls within the scope of subsidiarity.

Amendment 74 aimed at broadening the scope of the record-keeping requirements in Article 32 and making this Article directly applicable to non-hazardous waste, was not introduced because the Council considered that it would increase bureaucracy unnecessarily, while partly overlapping with the record-keeping requirements of the Regulation on shipment of waste (Article 20, Regulation (EC) No 1013/2006). As an alternative, the common position foresees, in Article 32(3), an option for Member States to apply the same record-keeping provision to producers of non-hazardous waste.

Amendment 92 adding the specification of criteria for project funding under Structural and Regional funds among the measures for waste prevention in the national programmes (Annex IV) was not considered relevant to the scope of the Directive and thus not integrated into the common position.

Amendments 95, 96 and 97 to Annex IV, adding certain details to the waste prevention measures, were not integrated into the common position, also given that this Annex is a non-exclusive list of examples, and that the Directive clarifies that Member States can include in their national programmes other measures as appropriate (Article 26(2)).

3. Other innovations introduced by the Council

Other main changes introduced by the common position relate to:

- the exclusions from the scope in Article 2, which clarifies among others the situation in relation to land (*in situ*), including unexcavated contaminated soil, and buildings permanently connected with land;
- definitions in Article 3, where, in particular, a definition of "hazardous waste" is added and, to avoid confusion over the term "re-use" which is relevant both in cases of prevention measures (for products or components that *are not* waste) and in the case of waste recovery operations, a new definition on "preparing for re-use" is added. This term will apply to certain recovery operations of products that have become waste. This will facilitate the application of the five-step waste hierarchy foreseen in Article 11 by allowing a clear distinction between the first and the second step of the hierarchy. The common position now foresees "prevention" as a first step (to *avoid* the generation of waste) and "preparing for re-use" as a second step (applicable to waste, as will be the case for the following steps);

- the extension of the network of disposal installations foreseen in Article 14, applying the principles of self-sufficiency and proximity, to installations for the recovery of mixed municipal waste. In addition, a derogation to Regulation (EC) No 1013/2006 on shipment of waste allows Member States to limit incoming shipments under certain conditions. These modifications are introduced to accommodate several concerns related to the classification of high energy efficient incinerators dedicated to the processing of municipal solid waste (cf. formula in Annex II, operation R1) among recovery operations as proposed by the Commission and agreed by the Council. In this respect, a new paragraph 1 on future specifications of the formula for incineration facilities, has also been added in Article 35 (interpretation and adaptation to technical progress).

IV. CONCLUSIONS

The Council considers that its common position represents a balanced and realistic solution to a number of concerns expressed by Member States on the Commission's proposal, where the European Parliament's Opinion is taken into account to a large extent. It looks forward to a constructive discussion with the European Parliament with a view to an early agreement on this Directive.
