

COMMON POSITION (EC) No 4/2008
adopted by the Council on 20 December 2007
with a view to the adopting Directive 2008/.../EC of the European Parliament and of the Council
of ... on waste and repealing certain Directives

(2008/C 71 E/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

waste and non-waste, and for the development of measures regarding waste prevention.

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

(1) Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste ⁽⁴⁾ establishes the legislative framework for the handling of waste in the Community. It defines key concepts such as waste, recovery and disposal and puts in place the essential requirements for the management of waste, notably an obligation for an establishment or undertaking carrying out waste management operations to have a permit or to be registered and an obligation for the Member States to draw up waste management plans. It also establishes major principles such as an obligation to handle waste in a way that does not have a negative impact on the environment and human health, an encouragement to apply the waste hierarchy and, in accordance with the polluter-pays principle, a requirement that the costs of disposing of waste must be borne by the holder of waste, by previous holders or by the producers of the product from which the waste came.

(2) Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme ⁽⁵⁾ calls for the development or revision of the legislation on waste, including a clarification of the distinction between

(3) The Commission communication of 27 May 2003 towards a Thematic Strategy on the prevention and recycling of waste noted the need to assess the existing definitions of recovery and disposal, the need for a generally applicable definition of recycling and a debate on the definition of waste.

(4) In its resolution of 20 April 2004 on the abovementioned communication ⁽⁶⁾, the European Parliament called on the Commission to consider extending Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control ⁽⁷⁾ to the waste sector as a whole. It also asked the Commission to differentiate clearly between recovery and disposal and to clarify the distinction between waste and non-waste.

(5) In its conclusions of 1 July 2004 the Council called on the Commission to bring forward a proposal for the revision of certain aspects of Directive 75/442/EEC, repealed and replaced by Directive 2006/12/EC, in order to clarify the distinction between waste and non-waste and that between recovery and disposal.

(6) It is therefore necessary to revise Directive 2006/12/EC in order to clarify key concepts such as the definitions of waste, recovery and disposal, to strengthen the measures that must be taken on waste prevention, to introduce an approach that takes into account the whole life-cycle of products and materials and not only the waste phase, and to focus on reducing the environmental impacts of waste generation and waste management, thereby strengthening the economic value of waste. Furthermore, the recovery of waste and the use of recovered materials should be encouraged in order to conserve natural resources. In the interests of clarity and readability, Directive 2006/12/EC should be repealed and replaced by a new directive.

⁽¹⁾ OJ C 309, 16.12.2006, p. 55.

⁽²⁾ Opinion of 14 June 2006 (not yet published in the Official Journal).

⁽³⁾ Opinion of the European Parliament of 13 February 2007 (not yet published in the Official Journal), Council Common Position of 20 December 2007 and Position of the European Parliament of ... (not yet published in the Official Journal).

⁽⁴⁾ OJ L 114, 27.4.2006, p. 9.

⁽⁵⁾ OJ L 242, 10.9.2002, p. 1.

⁽⁶⁾ OJ C 104 E, 30.4.2004, p. 401.

⁽⁷⁾ OJ L 257, 10.10.1996, p. 26. Directive as last amended by Directive 2003/87/EC (OJ L 275, 25.10.2003, p. 32).

- (7) Since most significant waste management operations are now covered by Community legislation in the field of environment, it is important that this Directive be adapted to that approach. An emphasis on the environmental objectives laid down in Article 174 of the Treaty would bring the environmental impacts of waste generation and waste management more sharply into focus throughout the life-cycle of resources. Consequently, the legal basis for this Directive should be Article 175.
- (8) Effective and consistent rules on waste treatment should be applied, subject to certain exceptions, to movable property which the holder discards or intends or is required to discard.
- (9) The waste status of uncontaminated excavated soils and other naturally occurring material which are used on sites other than the one from which they were excavated should be considered according to the waste definition and the provisions on by-products or on the end of waste status under this Directive.
- (10) Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption ⁽¹⁾ provides, *inter alia*, for proportionate controls as regards the collection, transport, processing, use and disposal of all animal by-products including waste of animal origin, preventing it from presenting a risk to animal and public health. It is therefore necessary to clarify the link with that Regulation, avoiding duplication of rules by excluding from the scope of this Directive animal by-products where they are intended for uses that are not considered waste operations.
- (11) In the light of the experience gained in applying Regulation (EC) No 1774/2002, it is appropriate to clarify the scope of waste legislation and of its provisions on hazardous waste as regards animal by-products regulated by Regulation (EC) No 1774/2002. Where animal by-products pose potential health risks, the appropriate legal instrument to address these risks is Regulation (EC) No 1774/2002 and unnecessary overlaps with waste legislation should be avoided.
- (12) The classification of waste as hazardous waste should be based, *inter alia*, on the Community legislation on chemicals, in particular concerning the classification of preparations as hazardous, including concentration limit values used for that purpose. Furthermore, it is necessary to maintain the system by which waste and hazardous waste have been classified in accordance with the list of the types of waste as last established by Commission Decision 2000/532/EC ⁽²⁾, in order to encourage a harmonised classification of waste and ensure the harmonised determination of hazardous waste within the Community.
- (13) It is necessary to distinguish between the preliminary storage of waste pending its collection, the collection of waste and the storage of waste pending treatment. Establishments or undertakings that produce waste in the course of their activities should not be regarded as engaged in waste management and subject to authorisation for the storage of their waste pending its collection.
- (14) Preliminary storage of waste within the definition of collection is understood as a storage activity pending its collection in facilities where waste is unloaded in order to permit its preparation for further transport for recovery or disposal elsewhere. The distinction between preliminary storage of waste pending collection and the storage of waste pending treatment should be made, in view of the objective of this Directive, according to the type of waste, the size and time period of storage and the objective of the collection. This distinction should be made by the Member States. The storage of waste prior to recovery for a period of 3 years or longer and the storage of waste prior to disposal for a period of 1 year or longer is subject to Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste ⁽³⁾.
- (15) Waste collection schemes which are not conducted on a professional basis should not be subject to registration as they present a lower risk and contribute to the separate collection of waste. Examples of such schemes are waste medicines collected by pharmacies, take-back schemes in shops for consumer goods and community schemes in schools.
- (16) Definitions of prevention, re-use, preparing for re-use, treatment and recycling should be included in this Directive, in order to clarify the scope of these concepts.
- (17) The definitions of recovery and disposal need to be modified in order to ensure a clear distinction between the two concepts, based on a genuine difference in environmental impact through the substitution of natural resources in the economy and recognising the potential benefits to the environment and human health of using waste as a resource. In addition, guidelines may be

⁽¹⁾ OJ L 273, 10.10.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 829/2007 (OJ L 191, 21.7.2007, p. 1).

⁽²⁾ OJ L 226, 6.9.2000, p. 3.

⁽³⁾ OJ L 182, 16.7.1999, p. 1. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

developed in order to clarify cases where this distinction is difficult to apply in practice or where the classification of the activity as recovery does not match the real environmental impact of the operation.

- (18) This Directive should also clarify when the incineration of municipal solid waste is energy-efficient and may be considered a recovery operation.
- (19) Disposal operations consisting of release to seas and oceans including sea bed insertion are also regulated by international conventions, in particular the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, done at London on 13 November 1972, and the 1996 Protocol thereto as amended in 2006.
- (20) There should be no confusion between the various aspects of the waste definition, and appropriate procedures should be applied, where necessary, to by-products that are not waste, on the one hand, or to waste that ceases to be waste, on the other hand. In order to specify certain aspects of the definition of waste, this Directive should clarify:
- when substances or objects resulting from a production process not primarily aimed at producing such substances or objects are by-products and not waste. The decision that a substance is not waste can be taken only on the basis of a coordinated approach, to be regularly updated, and where this is consistent with the protection of the environment and human health. If the use of a by-product is allowed under an environmental licence or general environmental rules, this can be used by Member States as a tool to decide that no overall adverse environmental or human health impacts are expected to occur, and
 - when certain waste ceases to be waste, laying down end-of-waste criteria that provide a high level of environmental protection and an environmental and economic benefit; possible categories of waste for which 'end-of-waste' specifications and criteria should be developed are, among others, construction and demolition waste, some ashes and slags, scrap metals, compost, waste paper and glass. For the purposes of reaching end-of-waste status, a recovery operation may be as simple as the checking of waste to verify that it fulfils the end-of-waste criteria.
- (21) In order to verify or calculate if the recycling and recovery targets set in Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste ⁽¹⁾, Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles ⁽²⁾, Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE) ⁽³⁾ and Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators ⁽⁴⁾ as well as other relevant Community legislation are met, the amounts of waste which have ceased to be waste should be accounted for as recycled and recovered waste.
- (22) On the basis of the definition of waste, in order to promote certainty and consistency, the Commission may adopt guidelines to specify in certain cases when substances or objects become waste. Such guidelines may be developed *inter alia* for electrical and electronic equipment and vehicles.
- (23) It is appropriate that costs be allocated in such a way as to reflect the real costs to the environment of the generation and management of waste.
- (24) The polluter-pays principle is a guiding principle at European and international levels. The waste producer and the waste holder should manage the waste in a way that guarantees a high level of protection of the environment and human health.
- (25) The introduction of extended producer responsibility in this Directive is one of the means to support the design and production of goods which take into full account and facilitate the efficient use of resources during their whole life-cycle including their repair, re-use, disassembly and recycling without compromising the free circulation of goods on the internal market.
- (26) This Directive should help move the EU closer to a 'recycling society', seeking to avoid waste generation and to use waste as a resource. In particular, the Sixth Community Environment Action Programme calls for measures aimed at ensuring the source separation, collection and recycling of priority waste streams. In line with that objective and as a means to facilitating or improving

⁽¹⁾ OJ L 365, 31.12.1994, p. 10. Directive as last amended by Directive 2005/20/EC (OJ L 70, 16.3.2005, p. 17).

⁽²⁾ OJ L 269, 21.10.2000, p. 34. Directive as last amended by Council Decision 2005/673/EC (OJ L 254, 30.9.2005, p. 69).

⁽³⁾ OJ L 37, 13.2.2003, p. 24.

⁽⁴⁾ OJ L 266, 26.9.2006, p. 1.

its recovery potential, waste should be separately collected if technically, environmentally and economically practicable, before undergoing recovery operations that deliver the best overall environmental outcome.

Commission, after an assessment on the management of bio-waste, will submit proposals for legislative measures, if appropriate.

- (27) In order to implement the precautionary principle and the principle of preventive action enshrined in Article 174(2) of the Treaty, it is necessary to set general environmental objectives for the management of waste within the Community. By virtue of those principles, it is for the Community and the Member States to establish a framework to prevent, reduce and, in so far as is possible, eliminate from the outset the sources of pollution or nuisance by adopting measures whereby recognised risks are eliminated.
- (28) The waste hierarchy generally constitutes the best overall environmental option in waste legislation and policy, while departing from such hierarchy may be necessary for specific waste streams when justified for reasons of, *inter alia*, technical feasibility, economic viability and environmental protection.
- (29) It is necessary, in order to enable the Community as a whole to become self-sufficient in waste disposal and in the recovery of mixed municipal waste collected from private households and to enable the Member States to move towards that aim individually, to make provision for a network of cooperation as regards disposal installations and installations for the recovery of mixed municipal waste collected from private households, taking into account geographical circumstances and the need for specialised installations for certain types of waste.
- (30) For the purposes of applying Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste⁽¹⁾, mixed municipal waste as referred to in Article 3(5) of that Regulation remains mixed municipal waste even when it has been subject to a waste treatment operation that has not substantially altered its properties.
- (31) It is important that hazardous waste be labelled in accordance with international and Community standards. However, where such waste is collected separately from households, this should not result in householders being obliged to complete the requisite documentation.
- (32) It is important, in accordance with the waste hierarchy, and for the purpose of reduction of greenhouse gas emissions originating from waste disposal on landfills, to facilitate the separate collection and proper treatment of bio-waste in order to produce environmentally-safe compost and other bio-waste based materials. The Commission, after an assessment on the management of bio-waste, will submit proposals for legislative measures, if appropriate.
- (33) Technical minimum standards concerning waste treatment activities not covered by Directive 96/61/EC may be adopted where there is evidence that a benefit would be gained in terms of protecting human health and the environment and where a co-ordinated approach to the implementation of this Directive would ensure the protection of human health and the environment.
- (34) It is necessary to specify further the scope and content of the waste management planning obligation, and to integrate into the process of developing or revising waste management plans the need to take into account the environmental impacts of the generation and management of waste. Account should also be taken, where appropriate, of the waste planning requirements laid down in Article 14 of Directive 94/62/EC and of the strategy for the reduction of biodegradable waste going to landfills, referred to in Article 5 of Directive 1999/31/EC.
- (35) Member States may apply environmental authorisations or general environmental rules to certain waste producers without compromising the proper functioning of the internal market.
- (36) According to Regulation (EC) No 1013/2006, Member States may take the measures necessary to prevent shipments of waste which are not in accordance with their waste management plans. By way of derogation from that Regulation, Member States should be allowed to limit incoming shipments to incinerators classified as recovery, where it has been established that national waste would have to be disposed of or that waste would have to be treated in a way that is not consistent with their waste management plans. It is recognised that certain Member States may not be able to provide a network comprising the full range of final recovery facilities within their territory.
- (37) In order to improve the way in which waste prevention actions are taken forward in the Member States and to facilitate the circulation of best practice in this area, it is necessary to strengthen the provisions relating to waste prevention and to introduce a requirement for the Member States to develop waste prevention programmes concentrating on the key environmental impacts and taking into account the whole life-cycle of products and materials. Such measures should pursue the objective of

⁽¹⁾ OJ L 190, 12.7.2006, p. 1.

breaking the link between economic growth and the environmental impacts associated with the generation of waste. Stakeholders, as well as the general public, should have the opportunity to participate in the drawing up of the programmes, and should have access to them once drawn up, in line with Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment ⁽¹⁾.

waste producers, holders, brokers, dealers, transporters and collectors, establishments or undertakings which carry out waste treatment operations and waste management schemes, in cases where they infringe the provisions of this Directive. Member States may also take action to recover the costs of non-compliance and remedial measures, without prejudice to Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage ⁽⁴⁾.

(38) Economic instruments can play a crucial role in the achievement of waste prevention and management objectives. Waste often has value as a resource, and the further application of economic instruments may maximise environmental benefits. The use of such instruments at the appropriate level should therefore be encouraged while stressing that individual Member States can decide on their use.

(42) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁵⁾.

(39) Certain provisions on the handling of waste, laid down in Council Directive 91/689/EEC of 12 December 1991 on hazardous waste ⁽²⁾, should be amended in order to remove obsolete provisions and to improve the clarity of the text. In the interests of simplifying Community legislation, they should be integrated into this Directive. In order to clarify the operation of the mixing ban laid down in Directive 91/689/EEC, and to protect the environment and human health, the exemptions to the mixing ban should additionally comply with best available techniques as defined in Directive 96/61/EC. Directive 91/689/EEC should therefore be repealed.

(43) In particular, power should be conferred on the Commission to establish criteria regarding a number of issues such as the conditions under which an object is to be considered a by-product, the end-of-waste status and the determination of waste which is considered as hazardous. Furthermore, power should be conferred on the Commission to adapt the annexes to technical and scientific progress and to specify the application of the formula for incineration facilities referred to in Annex II, R 1. Since those measures are of general scope and are designed to amend non-essential elements of this Directive and to supplement it by the addition of new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(40) In the interests of the simplification of Community legislation and the reflection of environmental benefits, the relevant provisions of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils ⁽³⁾ should be integrated into this Directive. Directive 75/439/EEC should therefore be repealed. The management of waste oils should be conducted in accordance with the guiding principle of the waste hierarchy, and preference should be given to options that deliver the best overall environmental outcome. The separate collection of waste oils remains crucial to their proper management and the prevention of damage to the environment from their improper disposal.

(44) In accordance with paragraph 34 of the interinstitutional agreement on better lawmaking ⁽⁶⁾, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures and to make them public.

(41) Member States should provide for effective, proportionate and dissuasive penalties to be imposed on natural and legal persons responsible for waste management, such as

(45) Since the objective of this Directive, namely, the protection of the environment and human health, cannot be sufficiently achieved by the Member States and can therefore, by reasons of the scale or effects of the Directive, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

⁽¹⁾ OJ L 156, 25.6.2003, p. 17.

⁽²⁾ OJ L 377, 31.12.1991, p. 20. Directive as last amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council (OJ L 33, 4.2.2006, p. 1).

⁽³⁾ OJ L 194, 25.7.1975, p. 23. Directive as last amended by Directive 2000/76/EC (OJ L 332, 28.12.2000, p. 91).

⁽⁴⁾ OJ L 143, 30.4.2004, p. 56. Directive as amended by Directive 2006/21/EC (OJ L 102, 11.4.2006, p. 15).

⁽⁵⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

⁽⁶⁾ OJ C 321, 31.12.2003, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

Subject matter, scope and definitions

Article 1

Subject matter and scope

This Directive lays down measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use.

Article 2

Exclusions from the scope

1. The following shall be excluded from the scope of this Directive:

- (a) gaseous effluents emitted into the atmosphere;
- (b) land (*in situ*) including unexcavated contaminated soil and buildings permanently connected with land;
- (c) uncontaminated soil and other naturally occurring material excavated in the course of construction activities where it is certain that the material will be used for the purposes of construction in its natural state on the site from which it was excavated;
- (d) radioactive waste;
- (e) decommissioned explosives;
- (f) faecal matter, if not covered by paragraph 2(b), straw and other natural non-hazardous agricultural or forestry material used in farming, forestry or for the production of energy from such biomass through processes or methods which do not harm the environment or endanger human health.

2. The following shall be excluded from the scope of this Directive to the extent that they are covered by other Community legislation:

- (a) waste waters;
- (b) animal by-products including processed products covered by Regulation (EC) No 1774/2002, except those which are destined for incineration, landfilling or use in a biogas or composting plant;
- (c) carcases of animals that have died other than by being slaughtered, including animals killed to eradicate epizootic diseases, and that are disposed of in accordance with Regulation (EC) No 1774/2002;

- (d) waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries covered by Directive 2006/21/EC.

3. Without prejudice to obligations under other relevant Community legislation, sediments relocated inside surface waters for the purpose of managing waters and waterways or of preventing floods or mitigating the effects of floods and droughts shall be excluded from the scope of this Directive if it is proved that the sediments are non-hazardous.

4. Specific rules for particular instances, or supplementing those of this Directive, on the management of particular categories of waste, may be laid down by means of individual Directives.

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

- 1. 'waste' means any substance or object which the holder discards or intends or is required to discard;
- 2. 'hazardous waste' means waste which displays one or more of the hazardous properties listed in Annex III;
- 3. 'waste oils' means any mineral or synthetic lubrication or industrial oils which have become unfit for the use for which they were originally intended, such as used combustion engine oils and gearbox oils, lubricating oils, oils for turbines and hydraulic oils;
- 4. 'bio-waste' means biodegradable garden and park waste, food and kitchen waste from households, restaurants, caterers and retail premises and comparable waste from food processing plants;
- 5. 'waste producer' means anyone whose activities produce waste (original waste producer) or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste;
- 6. 'waste holder' means the waste producer or the natural or legal person who is in possession of the waste;
- 7. 'dealer' means any undertaking which acts in the role of principal to purchase and subsequently sell waste, including such dealers who do not take physical possession of the waste;
- 8. 'broker' means any undertaking arranging the recovery or disposal of waste on behalf of others, including such brokers who do not take physical possession of the waste;

9. 'waste management' means the collection, transport, recovery and disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including actions taken as a dealer or broker;
10. 'collection' means the gathering of waste, including the preliminary sorting and preliminary storage of waste for the purposes of transport to a waste treatment facility;
11. 'prevention' means measures taken before a substance, material or product has become waste, that reduce:
 - (a) the quantity of waste, including through the re-use of products or the extension of life span of products;
 - (b) the adverse impacts of the generated waste on the environment and human health; or
 - (c) the content of harmful substances in materials and products;
12. 're-use' means any operation by which products or components that are not waste are used again for the same purpose for which they were conceived;
13. 'treatment' means recovery or disposal operations, including preparation prior to recovery or disposal;
14. 'recovery' means any operation the principal result 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. Annex II sets out a non-exhaustive list of recovery operations;
15. 'preparing for re-use' means checking, cleaning or repairing recovery operations, by which products or components of products that have become waste are prepared so that they will be re-used without any other pre-processing;
16. 'recycling' means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations;
17. 'regeneration of waste oils' means any recycling operation whereby base oils can be produced by refining waste oils, in particular by removing the contaminants, the oxidation products and the additives contained in such oils;
18. 'disposal' means any operation which is not recovery even where the operation has as a secondary consequence the

reclamation of substances or energy. Annex I sets out a non-exhaustive list of disposal operations;

19. 'best available techniques' means best available techniques as defined in Article 2(11) of Directive 96/61/EC.

Article 4

By-products

1. A substance or object, resulting from a production process, the primary aim of which is not the production of that item, may be regarded as not being waste referred to in point (1) of Article 3 but as being a by-product only if the following conditions are met:

- (a) further use of the substance or object is certain;
- (b) the substance or object can be used directly without any further processing other than normal industrial practice;
- (c) the substance or object is produced as an integral part of a production process; and
- (d) further use is lawful, i.e. the substance or object fulfils all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.

2. On the basis of the conditions laid down in paragraph 1, measures may be adopted to determine the criteria to be met for specific substances or objects to be regarded as a by-product and not as waste referred to in point (1) of Article 3. These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 36(2).

Article 5

End-of-waste status

1. Certain specified waste shall cease to be waste within the meaning of point (1) of Article 3 when it has undergone a recovery operation and complies with specific criteria to be developed in accordance with the following conditions:

- (a) the substance or object is commonly used for a specific purpose;
- (b) a market or demand exists for such a substance or object;

- (c) the substance or object fulfils the technical requirements for the specific purpose referred to in (a) and meets the existing legislation and standards applicable to products; and
- (d) the use of the substance or object will not lead to overall adverse environmental or human health impacts.

The criteria shall include limit values for pollutants where necessary.

2. The measures relating to the adoption of such criteria and specifying the waste, designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 36(2).

3. Waste which ceases to be waste in accordance with paragraphs 1 and 2, shall also cease to be waste for the purpose of the recovery and recycling targets set out in Directives 94/62/EC, 2000/53/EC, 2002/96/EC and 2006/66/EC and other relevant Community legislation.

4. Where criteria have not been set at Community level under the procedure set out in paragraphs 1 and 2, Member States may decide case by case whether certain waste has ceased to be waste taking into account the applicable case law. They shall notify the Commission of such decisions in accordance with Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services ⁽¹⁾ where so required by that Directive.

Article 6

List of waste

1. The measures relating to the updating of the list of waste established by Commission Decision 2000/532/EC, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 36(2). The list of waste shall include hazardous waste and shall take into account the origin and composition of the waste and, where necessary, the limit values of concentration of hazardous substances. The list of waste shall be binding as regards determination of the waste which is to be considered as hazardous waste. The inclusion of a substance or object in the list shall not mean that it is waste in all circumstances. A substance or object shall be considered to be waste only where the definition in point (1) of Article 3 is met.

2. A Member State may consider waste as hazardous waste where, even though it does not appear as such on the list of waste, it displays one or more of the properties listed in

Annex III. The Member State shall notify the Commission of any such cases in the report provided for in Article 34(1) and shall provide the Commission with all relevant information. In the light of notifications received, the list shall be reviewed in order to decide on its adaptation.

3. Where a Member State has evidence to show that specific waste that appears on the list as hazardous waste does not display any of the properties listed in Annex III, it may consider that waste as non-hazardous waste. The Member State shall notify the Commission of any such cases in the report provided for in Article 34(1) and shall provide the Commission with the necessary evidence. In the light of notifications received, the list shall be reviewed in order to decide on its adaptation.

4. The measures relating to the revision of the list in order to decide on its adaptation pursuant to paragraphs 2 and 3, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 36(2).

CHAPTER II

General requirements

Article 7

Extended producer responsibility

1. In order to strengthen the prevention and recovery of waste, Member States may take legislative or non-legislative measures to ensure that any natural or legal person who professionally develops, manufactures, processes and treats or sells products (producer of the product) has extended producer responsibility.

Such measures may include an acceptance of returned products and of the waste that remains after those products have been used, as well as the subsequent management of the waste and financial responsibility for such activities.

2. Member States may take appropriate measures to encourage the design of products in order to reduce their environmental impacts and the generation of waste in the course of the production and subsequent use of products, and in order to ensure that the recovery and disposal of products that have become waste take place in accordance with Articles 10 and 11.

Such measures may encourage, *inter alia*, the development, production and marketing of products that are suitable for multiple use, that are technically durable and that are, after having become waste, suitable for proper and safe recovery and environmentally compatible disposal.

⁽¹⁾ OJ L 204, 21.7.1998, p. 37. Directive as last amended by Council Directive 2006/96/EC (OJ L 363, 20.12.2006, p. 81).

3. When applying extended producer responsibility, Member States shall take into account the technical feasibility and economic viability and the overall environmental, human health and social impacts, respecting the need to ensure the proper functioning of the internal market.

4. The extended producer responsibility shall be applied without prejudice to the responsibility for waste management as provided for in Article 13(1).

Article 8

Recovery

1. Member States shall take the necessary measures to ensure that waste undergoes recovery operations, in accordance with Articles 10 and 11.

2. Where necessary to comply with paragraph 1 and to facilitate or improve recovery, waste shall be collected separately if technically, environmentally and economically practicable and shall not be mixed with other waste or other material with different properties.

Article 9

Disposal

Member States shall ensure that, where recovery in accordance with Article 8(1) is not undertaken, waste undergoes disposal operations.

Article 10

Protection of human health and the environment

Member States shall take the necessary measures to ensure that waste management is carried out without endangering human health, without harming the environment and, in particular:

- (a) without risk to water, air, soil, plants or animals;
- (b) without causing a nuisance through noise or odours; and
- (c) without adversely affecting the countryside or places of special interest.

Article 11

Waste hierarchy

1. The following waste hierarchy shall apply as a guiding principle in waste prevention and management legislation and policy:

- (a) prevention;
- (b) preparing for re-use;

(c) recycling;

(d) other recovery, e.g. energy recovery; and

(e) disposal.

2. When applying the waste hierarchy referred to in paragraph 1, Member States shall take measures to encourage the options that deliver the best overall environmental outcome. This may require specific waste streams departing from the hierarchy where this is justified by life-cycle thinking on the overall impacts of the generation and management of such waste.

Member States shall take into account the general environmental protection principles of precaution and sustainability, technical feasibility and economic viability, protection of resources as well as the overall environmental, human health, economic and social impacts, in accordance with Articles 1 and 10.

Article 12

Costs

1. In accordance with the polluter-pays principle, the costs of waste management shall be borne by the original waste producer or by the current or previous waste holders.

2. Member States may decide that the costs of waste management are to be borne partly or wholly by the producer of the product from which the waste came and that the distributors of such product may share these costs.

CHAPTER III

Waste management

Article 13

Responsibility for waste management

1. Member States shall take the necessary measures to ensure that any original waste producer or other holder carries out the treatment of waste himself or has the treatment handled by a dealer or an establishment or undertaking which carries out waste treatment operations or arranged by a private or public waste collector in accordance with Articles 10 and 11.

2. When the waste is transferred from the original producer or holder to one of the natural or legal persons referred to in paragraph 1 for preliminary treatment, the responsibility for carrying out a complete recovery or disposal operation shall not be discharged as a general rule.

Without prejudice to Regulation (EC) No 1013/2006, Member States may specify the conditions of responsibility and decide in which cases the original producer is to retain responsibility for the whole treatment chain or in which cases the responsibility of the producer and the holder can be shared or delegated among the actors of the treatment chain.

3. Member States may decide, in accordance with Article 7, that the responsibility for arranging waste management is to be borne partly or wholly by the producer of the product from which the waste came and that distributors of such product may share this responsibility.

4. Member States shall take the necessary measures to ensure that, within their territory, the establishments or undertakings which collect or transport waste on a professional basis deliver the waste collected and transported to appropriate treatment installations respecting the obligations provided for in Article 10.

Article 14

Principles of self-sufficiency and proximity

1. Member States shall take appropriate measures, in cooperation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of waste disposal installations and of installations for the recovery of mixed municipal waste collected from private households, including where such collection also covers such waste from other producers, taking into account best available techniques.

By way of derogation from Regulation (EC) No 1013/2006, Member States may, in order to protect their network, limit incoming shipments of waste destined to incinerators that are classified as recovery, where it has been established that such shipments would result in national waste having to be disposed of or waste having to be treated in a way that is not consistent with their waste management plans. Member States shall notify the Commission of any such decision. Member States may also limit outgoing shipments of waste on environmental grounds as set out in Regulation (EC) No 1013/2006.

2. The network shall be designed to enable the Community as a whole to become self-sufficient in waste disposal as well as in the recovery of waste referred to in paragraph 1, and to enable Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste.

3. The network shall enable waste to be disposed of or waste referred to in paragraph 1 to be recovered in one of the nearest appropriate installations, by means of the most appropriate methods and technologies, in order to ensure a high level of protection for the environment and public health.

4. The principles of proximity and self-sufficiency shall not mean that each Member State has to possess the full range of final recovery facilities within that Member State.

Article 15

Ban on the mixing of hazardous waste

1. Member States shall take the necessary measures to ensure that hazardous waste is not mixed, either with other categories of hazardous waste or with other waste, substances or materials. Mixing shall include the dilution of hazardous substances.

2. By way of derogation from paragraph 1, Member States may allow mixing provided that:

(a) the mixing operation is carried out by an establishment or undertaking which has obtained a permit in accordance with Article 20;

(b) the conditions laid down in Article 10 are complied with and the adverse impact of the waste management on human health and the environment is not increased; and

(c) the mixing operation conforms to best available techniques.

3. Subject to technical and economic feasibility criteria, where hazardous waste has been mixed in a manner contrary to paragraph 1, separation shall be carried out where possible and necessary in order to comply with Article 10.

Article 16

Labelling of hazardous waste

1. Member States shall take the necessary measures to ensure that, in the course of collection, transport and temporary storage, hazardous waste is packaged and labelled in accordance with the international and Community standards in force.

2. Whenever hazardous waste is transferred within a Member State, it shall be accompanied by an identification document, which may be in electronic format, containing the appropriate data specified in Annex IB to Regulation (EC) No 1013/2006.

*Article 17***Hazardous waste produced by households**

Articles 15, 16 and 32 shall not apply to mixed waste produced by households.

Articles 16 and 32 shall not apply to separate fractions of hazardous waste produced by households until they are accepted for collection, disposal or recovery by an establishment or an undertaking which has obtained a permit or has been registered in accordance with Articles 20 or 23.

*Article 18***Waste oils**

1. Without prejudice to the obligations related to the management of hazardous waste laid down in Articles 15 and 16, Member States shall take the necessary measures to ensure that:

- (a) waste oils are collected separately, where this is technically feasible;
- (b) waste oils are treated in accordance with Articles 10 and 11;
- (c) where this is technically feasible and economically viable, waste oils of different characteristics are not mixed and waste oils are not mixed with other kinds of waste or substances, if such mixing impedes their treatment.

2. For the purposes of separate collection of waste oils and their proper treatment, Member States may, according to their national conditions, apply additional measures such as technical requirements, producer responsibility, economic instruments or voluntary agreements.

3. If waste oils, according to national legislation, are subject to requirements of regeneration, Member States may prescribe that such waste oils shall be regenerated if technically feasible and, where Articles 11 or 12 of Regulation (EC) No 1013/2006 apply, restrict the transboundary shipment of waste oils from their territory to incineration or co-incineration facilities in order to give priority to the regeneration of waste oils.

*Article 19***Bio-waste**

Member States shall take measures, as appropriate, and in accordance with Articles 10 and 11, to encourage:

- (a) the separate collection of bio-waste;

- (b) the treatment of bio-waste in a way that fulfils a high level of environmental protection;

- (c) the use of environmentally safe materials produced from bio-waste.

The Commission shall carry out an assessment on the management of bio-waste with a view to submitting a proposal if appropriate.

*CHAPTER IV***Permits and registrations***Article 20***Issue of permits**

1. Member States shall require any establishment or undertaking intending to carry out waste treatment to obtain a permit from the competent authority.

Such permits shall specify at least the following:

- (a) the types and quantities of waste that may be treated;
- (b) for each type of operation permitted, the technical and any other requirements relevant to the site concerned;
- (c) the safety and precautionary measures to be taken;
- (d) the method to be used for each type of operation;
- (e) such monitoring and control operations as may be necessary;
- (f) such closure and after-care provisions as may be necessary.

2. Permits may be granted for a specified period and may be renewable.

3. Where the competent authority considers that the intended method of treatment is unacceptable from the point of view of environmental protection, in particular when the method is not in accordance with Article 10, it shall refuse to issue the permit.

4. It shall be a condition of any permit covering incineration or co-incineration with energy recovery that the recovery of energy take place with a high level of energy efficiency.

5. Provided that the requirements of this Article are complied with, any permit produced pursuant to other national or Community legislation may be combined with the permit required under paragraph 1 to form a single permit, where such a format obviates the unnecessary duplication of information and the repetition of work by the operator or the competent authority.

*Article 21***Exemptions from permit requirements**

Member States may exempt from the requirement laid down in Article 20(1) establishments or undertakings for the following operations:

- (a) disposal of their own non-hazardous waste at the place of production; or
- (b) recovery of waste.

*Article 22***Conditions for exemptions**

1. Where a Member State wishes to allow exemptions, as provided for in Article 21, it shall lay down, in respect of each type of activity, general rules specifying the types and quantities of waste that may be covered by an exemption, and the method of treatment to be used.

Those rules shall be designed to ensure that waste is treated in accordance with Article 10. In the case of disposal operations referred to in point (a) of Article 21 those rules should consider best available techniques.

2. In addition to the general rules provided for in paragraph 1, Member States shall lay down specific conditions for exemptions relating to hazardous waste, including types of activity, as well as any other necessary requirement for carrying out different forms of recovery and, where relevant, the limit values for the content of hazardous substances in the waste as well as the emission limit values.

3. Member States shall inform the Commission of the general rules laid down pursuant to paragraphs 1 and 2.

*Article 23***Registration**

Where the following are not subject to permit requirements, Member States shall ensure that the competent authority keeps a register of:

- (a) establishments or undertakings which collect or transport waste on a professional basis;
- (b) dealers or brokers; and
- (c) establishments or undertakings which are subject to exemptions from the permit requirements pursuant to Article 21.

*Article 24***Minimum standards**

1. Technical minimum standards for treatment activities which require a permit pursuant to Article 20 may be adopted

where there is evidence that a benefit in terms of the protection of human health and the environment would be gained from such minimum standards. These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 36(2).

2. Such minimum standards shall cover only those waste treatment activities that are not covered by Directive 96/61/EC or are not appropriate for coverage by that Directive.

3. Such minimum standards shall:

- (a) be directed to the main environmental impacts of the waste treatment activity;
- (b) ensure that the waste is treated in accordance with Article 10;
- (c) take into account best available techniques; and
- (d) as appropriate, include elements regarding the quality of treatment and the process requirements.

4. Minimum standards for activities that require registration pursuant to points (a) and (b) of Article 23 shall be adopted where there is evidence that a benefit in terms of the protection of human health and the environment or in avoiding disruption to the internal market would be gained from such minimum standards, including elements regarding the technical qualification of collectors, transporters, dealers or brokers.

These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 36(2).

*CHAPTER V***Plans and programmes***Article 25***Waste management plans**

1. Member States shall ensure that their competent authorities establish, in accordance with Articles 1, 10, 11 and 14, one or more waste management plans.

Those plans shall, alone or in combination, cover the entire geographical territory of the Member State concerned.

2. The waste management plans shall set out an analysis of the current waste management situation in the geographical entity concerned, as well as the measures to be taken to improve environmentally sound preparing for re-use, recycling, recovery and disposal of waste and an evaluation of how the plan will support the implementation of the objectives and provisions of this Directive.

3. The waste management plans shall contain, as appropriate and taking into account the geographical level and coverage of the planning area, at least the following:

- (a) the type, quantity and source of waste generated within the territory, the waste likely to be shipped from or to the national territory, and an evaluation of the development of waste streams in the future;
- (b) existing waste collection schemes and major disposal and recovery installations, including any special arrangements for waste oils, hazardous waste or waste streams addressed by specific Community legislation;
- (c) an assessment of the need for new collection schemes, the closure of existing waste installations, additional waste installation infrastructure in accordance with Article 14, and, if necessary, the investments related thereto;
- (d) sufficient information on the location criteria for site identification and on the capacity of future disposal or major recovery installations, if necessary;
- (e) general waste management policies, including planned waste management technologies and methods, or policies for waste posing specific management problems.

4. The waste management plan may contain, taking into account the geographical level and coverage of the planning area, the following:

- (a) organisational aspects related to waste management including a description of the allocation of responsibilities between public and private actors carrying out the waste management;
- (b) an evaluation of the usefulness and suitability of the use of economic and other instruments in tackling various waste problems, taking into account the need to maintain the smooth functioning of the internal market;
- (c) the use of awareness campaigns and information provision directed at the general public or at a specific set of consumers;
- (d) historical contaminated waste disposal sites and measures for their rehabilitation.

5. Waste management plans shall conform to the waste planning requirements laid down in Article 14 of Directive 94/62/EC and the strategy for the implementation of the reduction of biodegradable waste going to landfills, referred to in Article 5 of Directive 1999/31/EC.

Article 26

Waste prevention programmes

1. Member States shall establish, in accordance with Articles 1 and 11, waste prevention programmes not later than ... (*).

(*) Five years after the entry into force of this Directive.

Such programmes shall be integrated either into the waste management plans provided for in Article 25 or into other environmental policy programmes, as appropriate, or shall function as separate programmes. If any such programme is integrated into the waste management plan or into other programmes, the waste prevention measures shall be clearly identified.

2. The programmes provided for in paragraph 1 shall set out the waste prevention objectives. Member States shall describe the existing prevention measures and evaluate the usefulness of the examples of measures indicated in Annex IV or other appropriate measures.

The aim of such objectives and measures shall be to break the link between economic growth and the environmental impacts associated with the generation of waste.

3. Member States shall determine appropriate specific qualitative or quantitative benchmarks for waste prevention measures adopted in order to monitor and assess the progress of the measures and may determine specific qualitative or quantitative targets and indicators, other than those referred to in paragraph 4, for the same purpose.

4. Indicators for waste prevention measures may be adopted in accordance with the procedure referred to in Article 36(3).

5. The Commission shall develop guidelines in order to assist the Member States in the preparation of the Programmes.

Article 27

Evaluation and review of plans and programmes

Member States shall ensure that the waste management plans and waste prevention programmes are evaluated at least every sixth year and revised as appropriate.

Article 28

Public participation

Member States shall ensure that relevant stakeholders and authorities and the general public have the opportunity to participate in the elaboration of the waste management plans and waste prevention programmes, and have access to them once elaborated, in accordance with Directive 2003/35/EC or, if relevant, Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment ⁽¹⁾. They shall place the plans and programmes on a publicly available website.

⁽¹⁾ OJ L 197, 21.7.2001, p. 30.

*Article 29***Cooperation**

Member States shall cooperate as appropriate with the other Member States concerned and the Commission to draw up the waste management plans and the waste prevention programmes in accordance with Articles 25 and 26.

*Article 30***Information to be submitted to the Commission**

1. Member States shall inform the Commission of the waste management plans and waste prevention programmes referred to in Articles 25 and 26, once adopted, and of any substantial revisions to the plans and programmes.

2. The format for notifying the information on the adoption and substantial revisions of those plans and programmes shall be adopted in accordance with the procedure referred to in Article 36(3).

*CHAPTER VI***Inspections and records***Article 31***Inspections**

1. Establishments or undertakings which carry out waste treatment operations, establishments or undertakings which collect or transport waste on a professional basis, brokers and dealers, and establishments or undertakings which produce hazardous waste shall be subject to appropriate periodic inspections by the competent authorities.

2. Inspections concerning collection and transport operations shall cover the origin, nature, quantity and destination of the waste collected and transported.

3. Member States may take account of registrations obtained under the Community Eco-Management and Audit Scheme (EMAS), in particular regarding the frequency and intensity of inspections.

*Article 32***Record keeping**

1. The establishments or undertakings referred to in Article 20(1), the producers of hazardous waste and the establishments and undertakings which collect or transport hazardous waste on a professional basis, or act as dealers and brokers of hazardous waste, shall keep a record of the quantity, nature and origin of the waste, and, where relevant, the destination, frequency of collection, mode of transport and treatment method foreseen in respect of the waste, and shall make that information available, on request, to the competent authorities.

2. For hazardous waste, the records shall be preserved for at least three years except in the case of establishments and undertakings transporting hazardous waste which must keep such records for at least 12 months.

Documentary evidence that the management operations have been carried out shall be supplied at the request of the competent authorities or of a previous holder.

3. Member States may require the producers of non-hazardous waste to comply with paragraphs 1 and 2.

*Article 33***Enforcement and penalties**

1. Member States shall take the necessary measures to prohibit the abandonment, dumping or uncontrolled management of waste.

2. Member States shall lay down provisions on the penalties applicable to infringements of the provisions of this Directive and shall take all measures necessary to ensure that they are implemented. The penalties shall be effective, proportionate and dissuasive.

*CHAPTER VII***Final provisions***Article 34***Reporting and reviewing**

1. Every three years, Member States shall inform the Commission of the implementation of this Directive by submitting a sectoral report in an electronic form. This report shall also contain information on the management of waste oil and on the progress achieved in the implementation of the waste prevention programmes.

The report shall be drawn up on the basis of a questionnaire or outline established by the Commission in accordance with the procedure referred to in Article 6 of Council Directive 91/692/EEC of 23 December 1991 standardizing and rationalizing reports on the implementation of certain Directives relating to the environment ⁽¹⁾. The report shall be submitted to the Commission within nine months of the end of the three year period covered by it.

2. The Commission shall send the questionnaire or outline to the Member States six months before the start of the period covered by the sectoral report.

3. The Commission shall publish a report on the implementation of this Directive within nine months of receiving the sectoral reports from the Member States in accordance with paragraph 1.

⁽¹⁾ OJ L 377, 31.12.1991, p. 48. Directive as last amended by Regulation (EC) No 1882/2003.

4. In the first report that intervenes by ... (*), the Commission shall review the implementation of this Directive and will present a proposal for revision if appropriate. The report shall also assess the existing Member State waste prevention programmes, targets and indicators on the basis of information submitted under Article 30 and shall review the opportunity of Community level programmes, targets and indicators.

Article 35

Interpretation and adaptation to technical progress

1. The Commission may develop guidelines for the interpretation of the definitions of recovery and disposal in points (14) and (18) of Article 3.

If necessary, the application of the formula for incineration facilities referred to in Annex II, R 1, shall be specified. Local climatic conditions may be taken into account, such as the severity of the cold and the need for heating insofar as they influence the amounts of energy that can technically be used or produced in the form of electricity, heating, cooling or processing steam. Local conditions of the outermost regions as recognised in the fourth subparagraph of Article 299(2) of the Treaty and of the territories mentioned in Article 25 of the 1985 Act of Accession may also be taken into account. This measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 36(2).

2. The Annexes may be amended in the light of scientific and technical progress. These measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 36(2).

Article 36

Committee procedure

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

4. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 37

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... (**).

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 38

Repeal

Directives 75/439/EEC, 91/689/EEC and 2006/12/EC are hereby repealed with effect from ... (***).

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex V.

Article 39

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 40

Addressees

This Directive is addressed to the Member States.

Done at ...

For the European Parliament
The President

For the Council
The President

(*) Six years after the entry into force of this Directive.

(**) 24 months from the date of entry into force of this Directive.
(***) 24 months from the entry into force of this Directive.

ANNEX I

Disposal operations

- D 1 Deposit into or on to land (e.g. landfill, etc.)
 - D 2 Land treatment (e.g. biodegradation of liquid or sludgy discards in soils, etc.)
 - D 3 Deep injection (e.g. injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.)
 - D 4 Surface impoundment (e.g. placement of liquid or sludgy discards into pits, ponds or lagoons, etc.)
 - D 5 Specially engineered landfill (e.g. placement into lined discrete cells which are capped and isolated from one another and the environment, etc.)
 - D 6 Release into a water body except seas/oceans
 - D 7 Release to seas/oceans including sea-bed insertion
 - D 8 Biological treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations numbered D 1 to D 12
 - D 9 Physico-chemical treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations numbered D 1 to D 12 (e.g. evaporation, drying, calcination, etc.)
 - D 10 Incineration on land
 - D 11 Incineration at sea (*)
 - D 12 Permanent storage (e.g. emplacement of containers in a mine, etc.)
 - D 13 Blending or mixing prior to submission to any of the operations numbered D 1 to D 12 (**)
 - D 14 Repackaging prior to submission to any of the operations numbered D 1 to D 13
 - D 15 Storage pending any of the operations numbered D 1 to D 14 (excluding temporary storage, pending collection, on the site where the waste is produced) (***)
-

(*) This operation is prohibited by EU legislation and international conventions.

(**) If there is no other D code appropriate, this can include preliminary operations prior to disposal including pre-processing such as, *inter alia*, sorting, crushing, compacting, pelletising, drying, shredding, conditioning or separating prior to submission to any of the operations numbered D 1 to D 12.

(***) Temporary storage means preliminary storage according to point (10) of Article 3.

ANNEX II

Recovery operations

- R 1 Use principally as a fuel or other means to generate energy (*)
- R 2 Solvent reclamation/regeneration
- R 3 Recycling/reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes) (**)
- R 4 Recycling/reclamation of metals and metal compounds
- R 5 Recycling/reclamation of other inorganic materials (***)
- R 6 Regeneration of acids or bases
- R 7 Recovery of components used for pollution abatement
- R 8 Recovery of components from catalysts
- R 9 Oil re-refining or other reuses of oil
- R 10 Land treatment resulting in benefit to agriculture or ecological improvement
- R 11 Use of waste obtained from any of the operations numbered R 1 to R 10
- R 12 Exchange of waste for submission to any of the operations numbered R 1 to R 11 (****)
- R 13 Storage of waste pending any of the operations numbered R 1 to R 12 (excluding temporary storage, pending collection, on the site where the waste is produced) (*****)

(*) This includes incineration facilities dedicated to the processing of municipal solid waste only where their energy efficiency is equal to or above:

- 0,60 for installations in operation and permitted in accordance with applicable Community legislation before 1 January 2009,
- 0,65 for installations permitted after 31 December 2008,

using the following formula:

$$\text{Energy efficiency} = (E_p - (E_f + E_i)) / (0,97 \times (E_w + E_f))$$

In which:

E_p means annual energy produced as heat or electricity. It is calculated with energy in the form of electricity being multiplied by 2,6 and heat produced for commercial use multiplied by 1,1 (GJ/year),

E_f means annual energy input to the system from fuels contributing to the production of steam (GJ/year),

E_w means annual energy contained in the treated waste calculated using the lower net calorific value of the waste (GJ/year),

E_i means annual energy imported excluding E_w and E_f (GJ/year),

0,97 is a factor accounting for energy losses due to bottom ash and radiation.

This formula shall be applied in accordance with the reference document on Best Available Techniques for waste incineration.

(**) This includes gasification and pyrolysis using the components as chemicals.

(***) This includes soil cleaning resulting in recovery of the soil and recycling of inorganic construction materials.

(****) If there is no other R code appropriate, this can include preliminary operations prior to recovery including pre-processing such as, *inter alia*, dismantling, sorting, crushing, compacting, pelletising, drying, shredding, conditioning, repackaging, separating, blending or mixing prior to submission to any of the operations numbered R 1 to R 11.

(*****) Temporary storage means preliminary storage according to point (10) of Article 3.

ANNEX III

Properties of waste which render it hazardous

- H 1 'Explosive': substances and preparations which may explode under the effect of flame or which are more sensitive to shocks or friction than dinitrobenzene.
- H 2 'Oxidizing': substances and preparations which exhibit highly exothermic reactions when in contact with other substances, particularly flammable substances.
- H 3-A 'Highly flammable'
- liquid substances and preparations having a flash point below 21 °C (including extremely flammable liquids), or
 - substances and preparations which may become hot and finally catch fire in contact with air at ambient temperature without any application of energy, or
 - solid substances and preparations which may readily catch fire after brief contact with a source of ignition and which continue to burn or to be consumed after removal of the source of ignition, or
 - gaseous substances and preparations which are flammable in air at normal pressure, or
 - substances and preparations which, in contact with water or damp air, evolve highly flammable gases in dangerous quantities.
- H 3-B 'Flammable': liquid substances and preparations having a flash point equal to or greater than 21 °C and less than or equal to 55 °C.
- H 4 'Irritant': non-corrosive substances and preparations which, through immediate, prolonged or repeated contact with the skin or mucous membrane, can cause inflammation.
- H 5 'Harmful': substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may involve limited health risks.
- H 6 'Toxic': substances and preparations (including very toxic substances and preparations) which, if they are inhaled or ingested or if they penetrate the skin, may involve serious, acute or chronic health risks and even death.
- H 7 'Carcinogenic': substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce cancer or increase its incidence.
- H 8 'Corrosive': substances and preparations which may destroy living tissue on contact.
- H 9 'Infectious': substances and preparations containing viable micro-organisms or their toxins which are known or reliably believed to cause disease in man or other living organisms.
- H 10 'Toxic for reproduction': substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce non-hereditary congenital malformations or increase their incidence.
- H 11 'Mutagenic': substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce hereditary genetic defects or increase their incidence.
- H 12 Waste which releases toxic or very toxic gases in contact with water, air or an acid.
- H 13 (*) 'Sensitizing': substances and preparations which, if they are inhaled or if they penetrate the skin, are capable of eliciting a reaction of hypersensitization such that on further exposure to the substance or preparation, characteristic adverse effects are produced.
- H 14 'Ecotoxic': waste which presents or may present immediate or delayed risks for one or more sectors of the environment.
- H 15 Waste capable by any means, after disposal, of yielding another substance, e.g. a leachate, which possesses any of the characteristics listed above.

(*) As far as testing methods are available.

Notes

1. Attribution of the hazardous properties 'toxic' (and 'very toxic'), 'harmful', 'corrosive', 'irritant', 'carcinogenic', 'toxic to reproduction', 'mutagenic' and 'eco-toxic' is made on the basis of the criteria laid down by Annex VI of Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances ⁽¹⁾.
2. Where relevant the limit values listed in Annex II and III of Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations ⁽²⁾ shall apply.

Test methods

The methods to be used are described in Annex V to Directive 67/548/EEC and in other relevant CEN-notes.

⁽¹⁾ OJ 196, 16.8.1967, p. 1. Directive as last amended by Directive 2006/102/EC (OJ L 363, 20.12.2006, p. 241).

⁽²⁾ OJ L 200, 30.7.1999, p. 1. Directive as last amended by Regulation (EC) No 1907/2006 (OJ L 396, 30.12.2006, p. 1. Corrected version in OJ L 136, 29.5.2007, p. 3).

ANNEX IV

Examples of waste prevention measures referred to in Article 26

Measures that can affect the framework conditions related to the generation of waste

1. The use of planning measures, or other economic instruments promoting the efficient use of resources.
2. The promotion of research and development into the area of achieving cleaner and less wasteful products and technologies and the dissemination and use of the results of such research and development.
3. The development of effective and meaningful indicators of the environmental pressures associated with the generation of waste aimed at contributing to the prevention of waste generation at all levels, from product comparisons at Community level through action by local authorities to national measures.

Measures that can affect the design and production and distribution phase

4. The promotion of eco-design (the systematic integration of environmental aspects into product design with the aim to improve the environmental performance of the product throughout its whole life cycle).
5. The provision of information on waste prevention techniques with a view to facilitating the implementation of best available techniques by industry.
6. Organise training of competent authorities as regards the insertion of waste prevention requirements in permits under this Directive and Directive 96/61/EC.
7. The inclusion of measures to prevent waste production at installations not falling under Directive 96/61/EC. Where appropriate, such measures could include waste prevention assessments or plans.
8. The use of awareness campaigns or the provision of financial, decision making or other support to businesses. Such measures are likely to be particularly effective where they are aimed at, and adapted to, small and medium sized enterprises and work through established business networks.
9. The use of voluntary agreements, consumer/producer panels or sectoral negotiations in order that the relevant businesses or industrial sectors set their own waste prevention plans or objectives or correct wasteful products or packaging.
10. The promotion of creditable environmental management systems, including EMAS and ISO 14001.

Measures that can affect the consumption and use phase

11. Economic instruments such as incentives for clean purchases or the institution of an obligatory payment by consumers for a given article or element of packaging that would otherwise be provided free of charge.
12. The use of awareness campaigns and information provision directed at the general public or a specific set of consumers.
13. The promotion of creditable eco-labels.
14. Agreements with industry, such as the use of product panels such as those being carried out within the framework of Integrated Product Policies or with retailers on the availability of waste prevention information and products with a lower environmental impact.
15. In the context of public and corporate procurement, the integration of environmental and waste prevention criteria into calls for tenders and contracts, in line with the Handbook on environmental public procurement published by the Commission on 29 October 2004.
16. The promotion of the reuse and/or repair of appropriate discarded products or of their components, notably through the use of educational, economic, logistic or other measures such as support to or establishment of accredited repair and reuse-centres and networks especially in densely populated regions.

ANNEX V

Correlation table

Directive 2006/12/EC	This Directive
Article 1(1)(a)	Article 3(1)
Article 1(1)(b)	Article 3(5)
Article 1(1)(c)	Article 3(6)
Article 1(1)(d)	Article 3(9)
Article 1(1)(e)	Article 3(18)
Article 1(1)(f)	Article 3(14)
Article 1(1)(g)	Article 3(10)
Article 1(2)	Article 6
Article 2(1)	Article 2(1)
Article 2(1)(a)	Article 2(1)(a)
Article 2(1)(b)	Article 2(2)
Article 2(1)(b)(i)	Article 2(1)(d)
Article 2(1)(b)(ii)	Article 2(2)(d)
Article 2(1)(b)(iii)	Article 2(1)(f) and (2)(c)
Article 2(1)(b)(iv)	Article 2(2)(a)
Article 2(1)(b)(v)	Article 2(1)(e)
Article 2(2)	Article 2(4)
Article 3(1)	Article 11
Article 4(1)	Article 10
Article 4(2)	Article 33(1)
Article 5	Article 14
Article 6	—
Article 7	Article 25
Article 8	Article 13
Article 9	Article 20
Article 10	Article 20
Article 11	Articles 21 and 22
Article 12	Article 23
Article 13	Article 31
Article 14	Article 32
Article 15	Article 12
Article 16	Article 34

Directive 2006/12/EC	This Directive
Article 17	Article 35
Article 18(1)	Article 36(1)
—	Article 36(2)
Article 18(2)	Article 36(4)
Article 18(3)	Article 36(3)
Article 19	Article 37
Article 20	—
Article 21	Article 39
Article 22	Article 40
Annex I	—
Annex IIA	Annex I
Annex IIB	Annex II
Directive 75/439/EEC	This Directive
Article 1(1)	Article 3(17)
Article 2	Articles 10 and 18
Article 3(1) and (2)	—
Article 3(3)	Article 10
Article 4	Article 10
Article 5(1)	—
Article 5(2)	—
Article 5(3)	—
Article 5(4)	Articles 23 and 31
Article 6	Article 20
Article 7(a)	Article 10
Article 7(b)	—
Article 8(1)	—
Article 8(2)(a)	—
Article 8(2)(b)	—
Article 8(3)	—
Article 9	—
Article 10(1)	Article 15
Article 10(2)	Article 10
Article 10(3) and (4)	—
Article 10(5)	Articles 16, 18, 22, 31 and 32

Directive 75/439/EEC	This Directive
Article 11	—
Article 12	Article 32
Article 13(1)	Article 31
Article 13(2)	—
Article 14	—
Article 15	—
Article 16	—
Article 17	—
Article 18	Article 34
Article 19	—
Article 20	—
Article 21	—
Article 22	—
Annex I	—
Directive 91/689/EEC	This Directive
Article 1(1)	—
Article 1(2)	—
Article 1(3)	—
Article 1(4)	Articles 3(2) and 6
Article 1(5)	Article 17
Article 2(1)	Article 20
Article 2(2)-(4)	Article 15
Article 3	Articles 21, 22 and 23
Article 4(1)	Article 31(1)
Article 4(2)(3)	Article 32
Article 5(1)	Article 16(1)
Article 5(2)	Article 31(2)
Article 5(3)	Article 16(2)
Article 6	Article 25
Article 7	—
Article 8	—
Article 9	—
Article 10	—

Directive 91/689/EEC	This Directive
Article 11	—
Article 12	—
Annexes I and II	—
Annex III	Annex III

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 2007.

The Economic and Social Committee and the Committee of the Regions delivered their Opinions on 19 June and 14 June 2006 respectively ⁽²⁾.

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,
- 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.

⁽¹⁾ OJ C 286 E, 23.11.2006, p. 1.

⁽²⁾ OJ C 229, 22.9.2006, p. 1.

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 ⁽¹⁾ and the Basel Convention ⁽²⁾.

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 D7 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).

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).

⁽¹⁾ Decision C(2001) 107 final of the OECD Council concerning the revision of Decision C(92) 39 final on the control of trans-boundary movements of waste destined for recovery operations.

⁽²⁾ Basel Convention of 22 March 1989 on the control of trans-boundary movements of hazardous waste and their disposal.

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 (H 14 and H 15) 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 R 1) 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.
