

Waste Framework Directive

2005/0281(COD) - 20/12/2007 - Council position

Of the 120 amendments adopted by Parliament at first reading, the Council has adopted either totally, in part, or in principle 55 of them. Further, the common position has modified the Commission's initial proposal in order to tighten provisions relating to the waste hierarchy; bio-waste and waste oils, as well as strengthening the concept of extended producer responsibility.

Concerning the definition of "waste" and provisions devoted to "secondary products" new provisions have been introduced in a bid to determine which substances/objects may be regarded as "by products" and which may be granted "end-of-waste" status. Both categories will be subject to specific conditions and criteria. Further, the common position has introduced a number of other changes that have not been foreseen by the European Parliament but which address a number of concerns expressed by the Member States in the course of the negotiations.

Parliamentary amendments taken up in part or in principle are as follows:

Objectives and the waste hierarchy: the common position has taken on board Parliamentary amendments that concern the waste hierarchy and the conservation of natural resources. The Council is of the view, however, that the subsidiarity principle should apply in cases where procedures depart from the hierarchy of certain waste streams.

Scope: much of the common position reflects the wishes expressed by Parliament at first reading. As such certain products will be excluded from the scope of the Directive. These concern: uncontaminated soil and other naturally-occurring material used for construction on site and from which it was excavated; animal by-products (intended for uses that are not considered waste operations); and non-hazardous sediments (relocated inside surface waters). It does not, however, include sewage sludge used in agriculture.

Prevention: a new definition for "prevention" has been incorporated into the revised proposal. However, actions relating the "prevention of risks during waste management operations" have not been taken on board given that such actions concern measures that have been taken before a substance, material or product has become a waste.

Re-use: the revised definition of "re-use" now clearly states that "re-use" applies to products or components that are not waste and which are used again for the same purpose for which they were conceived.

Recycling: the revised "recycling" definition has been incorporated into the new text.

Waste oils: the definition of "waste oils" has been incorporated, in principle, and covers all industrial waste oils and any mineral or synthetic lubrication oil.

Treatment: the definition of "treatment" should be read in conjunction with Annexes I and II on disposal and recovery operations. Explanatory notes have been added to these Annexes in a bid to clarify the situation in respect to interim/preparatory operations.

Disposal: a revised definition of the term "disposal" has been taken up in part and in substance in the revised text.

Distinction between by-products and waste: this distinction is covered in part and in substance in Article 4 on “By-products”.

Producer responsibility: the common position does not make producer responsibility obligatory for the Member States and it does not provide for a follow-up procedure on its implementation.

The waste list: the waste list now makes specific reference to Commission Decision 2000/532/EC as well as to the regulatory procedure with scrutiny for adapting the list. The common position specifies, however, that the list should be made binding on hazardous waste only.

Recovery: the common position specifies that the Commission may, in cases where there is evidence to show that both human health and the environment can benefit, adapt technical minimum standards for treatment activities (recovery and disposal). This must take account of best available techniques. Annex IV sets out examples of waste prevention measures in so far as economic instruments, procurement criteria and accredited re-use and repair networks are concerned.

High-quality recycling: a reference to a separate collection has been added while the existing obligation for separate collection of hazardous waste and waste oils is maintained. Parliamentary amendments relating to EU-target levels for re-use and recycling have not, however, been taken on-board. The Council considered them unrealistic in terms of existing data gaps.

Recovery operations: modifications that concern recovery operations have not been adopted by Council given that Annex I may not be modified unilaterally and in light of the EU’s international obligations under the OECD and Basel Convention.

Disposal operation: amendments concerning disposal operations and the link to Annex I have been partially accepted. A note has been added clarifying that disposal operation D11 is prohibited under both EU legislation and international conventions. Recital 19 also refers to disposal operation D7.

Requirements for waste recovery, disposal and end-of-waste status: provisions concerning waste recovery, disposal and end-of-waste status, as proposed by Parliament, are now covered under Article 24 on “Technical minimum standards” as well as partially under Article 22(1) on “conditions for exemptions (as laid down by the Member States for recovery operations for certain disposal operations of non-hazardous waste at the place of production). It is also partially covered by Article 5 on “End of Waste”. The common position does not take up proposals regarding best available waste management techniques and differs from Parliamentary amendments vis-à-vis the use of comitology procedures.

Mixing hazardous waste: the dilution and mixing of hazardous waste and on hazardous waste produced by households has been taken over in part and in principle by Articles 15 and 17 respectively.

Waste oils: amendments relating to waste oils have been taken up in substance. The common position specifies that the “EU-wide priority for regeneration” will be repealed along with Directive 75/439/EEC.

Introducing a new Chapter on Bio-waste: the common position has accepted, partially, Parliamentary amendments concerning this Chapter through Article 19. The development of specification and criteria for compost is also foreseen in Recital 20 concerning “end-of-waste”. The common position, however, differs on the nature of the requirements foreseen. This concerns, for example, separate collection and treatment prior to spreading on land.

Minimum standards for permits: the common position differs from Parliamentary Amendments as far as the procedure for the development of such standards is concerned. The Council has modified the text so that comitology is to be used rather than individual Directives.

Waste prevention programmes: although the common position has adopted many of the Parliamentary amendments in relation to this issue, it does not support target dates for stabilising and reducing the generation of waste.

Adapting Annex III and IV: the common position states that adaptation to Annexes III and IV to scientific and technical progress, will take place in accordance with the regulatory procedure with scrutiny. Indeed, the common position states that this procedure will apply to all of the Directive's Annexes.

The other main changes introduced by the Council include:

Scope: the common position clarifies that land (*in situ*), including unexcavated contaminated soil and buildings permanently connected with land; will be excluded from the scope of the proposed Directive.

Definitions: a new definition on “preparing for re-use” has been added. This term will apply to certain recovery operations of products that have become waste. It is hoped that this move will aid the application of the five-step waste hierarchy by allowing a clear distinction between the first and the second step of the hierarchy. Thus, 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).

Disposal installations: the common position has also extended the network of disposal installations that apply the principle of self sufficiency and proximity to installations for the recovery of mixed municipal waste. A derogation to Regulation (EC) No 1013/2006 on shipment of waste allows Member States to limit incoming shipments under certain conditions. These modifications have been introduced in order to accommodate several concerns relating to the classification of high energy efficient incinerators that are dedicated to the processing of municipal solid waste. As such, a new paragraph on future specifications for incineration facilities has also been added.