



## **CEMR's position on the revision of the waste framework directive and thematic strategy on the prevention and recycling of waste**

### **CEMR'S KEY POINTS**

#### **CEMR:**

- Advocates a waste management strategy that puts prevention and re-use at the top, then, by decreasing order, recycling, energy recovery, and disposal as environmentally-friendly as possible;
  - Calls to maintain the existing waste hierarchy as the main structure for EU waste legislation whilst drawing on the contribution that life cycle approaches may provide in establishing an innovative and flexible instrument;
  - Calls for the 'end of waste exercise" to be applied only to treated waste and strictly limited to products where such a clarification is indeed needed to boost recovery and at the same time provide an environmental protection level at least equivalent to the one achieved through the application of waste legislation. The eligibility of waste streams and the establishment of environmental and quality criteria applying to end of waste products such as biowaste must be set through the legislative process;
  - Demands a strong role for political actors and democratic institutions, and a strict limitation of the use of the comitology procedure to technical questions;
  - Welcomes the clearer EU definitions of recovery and disposal and calls for minimum standards applying to recovery operations to be adopted through the legislative process;
  - Stresses that the definition of such minimum standards is a necessary but not sufficient condition for the establishment of a level playing field. As long as the use made in Member States of economic instruments is not harmonised, at least to some minimum extent, there will be no internal market for waste recovery;
  - Welcomes the provision on waste prevention programmes and proposes that EU guidelines on waste prevention are developed and that an EU system for the exchange of information and best practice on waste prevention at the local and regional level is established;
  - Calls for the maintenance of strict standards on the separation of hazardous wastes from other types of hazardous and non-hazardous waste;
  - Asks for a recognition that waste management is a service of general economic interest;
  - Calls for an EU vision promoting more efficient resource management throughout the entire economy ensuring that all levels of government and stakeholders work together to provide a strategic management framework for all wastes;
  - Advocates a strong and structured dialogue between the EU institutions and local and regional government.
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## INTRODUCTION

1. Local and regional authorities are heavily and increasingly involved in the management of waste. In most cases, they are responsible for developing and implementing municipal waste management plans based on the medium to long term. They are also democratically accountable for the quality of life of the citizens and for the quality of the local environment.

2. CEMR believes the EU needs a vision for a larger and stronger framework on more sustainable production and consumption patterns and a more rational use of natural resources. CEMR welcomes the adoption by the European Commission of the Thematic Strategy on Natural Resources as a first step towards the development of a new overall approach to the management of natural resources.

3. Such a vision also requires the need to consider the waste issue across the board, including non-municipal. Local and regional authorities should be involved with other layers of government and stakeholders including producers in a broad strategy for waste and resource management that would include commercial and industrial, construction and demolition, agricultural, mining and quarrying wastes, sewage sludge and dredged spoils, alongside municipal waste.

4. The principal issue at stake for local government in waste management is to know clearly and reliably the origin, amount and type of waste they will be responsible for in the forthcoming 10 to 30 years. This knowledge is the necessary basis for planning the required treatment capacity. Certainty as regards planning is vital not only for local authorities, whose scarce resources mean that investments in waste management facilities need to be carefully planned, but also to encourage the private sector to invest in high quality treatment capacity, and where appropriate for joint planning for treatment capacity across the sectors. Local and regional authorities thus urgently need mid- and long-term clear waste policies.

5. In 2003, CEMR welcomed the Commission's Communication 'Towards a Thematic Strategy on the prevention and recycling of waste' as an important opportunity for all actors and spheres of government to consider the future of waste policy. The Strategy aims to decrease the environmental impacts of waste, notably through life cycle policies and by considering waste as a resource. Generally, CEMR welcomes this approach. However, objectives of absolute waste volume reductions should not be sidelined (as clearly set out in the sixth Environmental Action Programme), and the traditional waste hierarchy, whilst it can be improved, should remain the main reference.

6. CEMR finds that the draft directive proposes an excessive recourse to the comitology procedure. The comitology is a procedure by which decisions of a technical nature are taken by a group of national experts chaired by the European Commission. However, some of the proposed decisions have a clear political dimension, since they can have significant implications on the scope of the EU waste legislation. This is one of the main points of concern of CEMR, as you can find them below.

In the following paragraphs, we comment about the Thematic Strategy on the Prevention and Recycling of Waste and the revision of the waste framework directive but we offer more detailed recommendations about the draft framework directive. The numbers in brackets in the paragraph's titles refer to articles or recitals of the draft framework directive.

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## CEMR COMMENTS

### **A shift from the traditional end of pipe approach to the life-cycle approach (recitals 6, 7, 17, 18, article 1 and annex IV)**

7. CEMR supports the development of the life-cycle approach by the Commission. There are undoubtedly waste prevention potentials in tackling material streams in products and production patterns at the source. Producers should be pushed to develop less resource intensive products and to reduce waste at the source. The environmental impact of transport should be taken into account too; citizens should be encouraged to produce and purchase locally where possible.

8. Life Cycle Analysis (LCA) can become an important instrument for developing an overall framework on sustainable production and consumption patterns and a more rational use of natural resources. In order to ease the pressure of human activities on the environment, we increasingly need such a framework at the EU and international levels.

9. Products should be developed for re-use and recovery. Local authorities can make the link between citizens and producers. They can co-operate with the latter on the products citizens and local authorities need for sounder local waste management. And they can continue to educate citizens on better individual product and waste management (e.g. re-use, sorting of waste, biowaste, lifestyle changes etc.). Furthermore, there are also improvements to be made to the waste management phase through the application of the life cycle approach.

10. Life cycle thinking is an important instrument in the development of producer responsibility. Producer responsibility enforces the polluter pays principle, enhances the life-cycle approach to products, and increases the responsibility of both producers and consumers in the product cycle. It is vital to ensure that producers have the incentives to develop more environmentally friendly products and that the burden for dealing with increasing waste streams does not fall upon the taxpayer alone.

A more efficient resource use can also be pushed by economic instruments and by product bans. CEMR favours the banning of hazardous substances such as heavy metals in production cycles wherever substitutes are available.

Economic instruments (e.g. taxes on dangerous products) can also have an important role to play here.

11. Life cycle instruments, if developed in the right way, have potential and can indeed fine tune the traditional waste hierarchy in some cases and bring added value. Nevertheless, CEMR stresses that, for the time being, many uncertainties remain, for instance on the financing, methodology, and certification of life cycle analysis. The lack of harmonised approach in life cycle thinking can lead to a fragmentation of the market. Relying too much on life cycle approaches could lead to a paralysis of policy: indeed, currently, different LCAs, ordered by different stakeholders, very often deliver completely opposite results. CEMR is not convinced that, in the present situation, LCA is mature enough to replace the current waste hierarchy as the main approach to waste management in the EU.

12. Waste management has been, until very recently, increasingly articulated around the EU directives on the different waste streams, and, although CEMR is not dogmatically attached to this end of pipe approach, an important shift would at this stage risk disrupting waste management and the waste sector in the EU. To prevent any legal void from emerging, the transition from the "approach (end of pipe treatment) to the new one" should be gradual and build upon a thorough assessment of the workability of LCAs as an important waste policy tool. CEMR would welcome the undertaking of more research on life cycle analysis.

- CEMR believes that the waste hierarchy is over-simplified in the directive proposal. CEMR would recommend to keep the first sentence of article 1 but to replace the second paragraph with a full-fledged hierarchy (5 levels as in the existing framework directive) accompanied by

a possibility to depart from its priorities if the results of life-cycle assessments legitimate such a derogation.

- CEMR would be in favour of a gradual introduction of the life-cycle approach to EU waste policies. CEMR calls for an increase of research on life-cycle analysis and asks that local and regional authorities are invited to be consulted about this research.
- CEMR has noted that the proposal for a waste directive does not designate the bodies that will be competent to validate the results of LCAs. CEMR recommends that such competence is placed with national authorities. The validation of the results at EU level could then be done by the Article 36.2 committee.
- CEMR believes common EU standards for life cycle instruments are needed in order to ensure coherent and sound policies and a minimum level playing field in the waste sector.

### **The introduction of end of waste concepts and definitions (recitals 2 and 14, article 11)**

13. CEMR believes it can be useful, in some cases, to define in a more specific way when waste ceases to be waste. However, CEMR would like to point out that the introduction of end of waste criteria would also have important implications for the scope of EU waste legislation, that CEMR would like to see remaining broad.

14. Under the Waste Framework Directive (75/442/EEC), waste is defined by an action (to be discarded, or intended or required to be discarded). It is therefore completely different from defining waste by quality criteria.

15. An end of waste approach is bound to alter the scope of EU waste legislation, since it will declassify products so far defined as waste. Such products, even if they have not completed the recovery process, will be allowed to escape from waste regulations. CEMR warns against the deregulation that could result. In fact, this deregulation is clearly stated in the explanatory memorandum of the draft directive, 'A procedure allowing for end of waste criteria to be set, clarifying where a waste ceases to be a waste is introduced, thereby introducing regulatory relief for recycled products or materials that represent a low risk for the environment'. As already stated in the previous paragraph, the EU waste sector is still being built and consolidated; any important deregulatory move could prove to be counter-productive for waste management, and ultimately for the quality of life of EU citizens.

16. The European Commission proposes to introduce a waste stream based procedure in order to establish the conditions under which waste may be deemed to have ceased being waste (under the justification that they do no longer represent an environmental risk - or just a low risk). CEMR considers that the Commission risks misallocating resources to this lengthy process, which could be better used for other environmental protection purposes.

17. Moreover, this procedure, based on a case-by-case approach, risks to increase interpretation problems and legal proceedings. Experience in the Netherlands has shown that the use of this - 'end of waste concept' is often inspired by diverging interests and leads to confusion. Sometimes the same material is in one case considered to be waste and in another case to be non-waste -- on the basis of the same criteria. CEMR fears that such a situation would be even worse at European level, leading to an increase in court cases.

18. Removing unnecessary barriers to trade is laudable, but framework waste legislation ought to be used as a corner stone in the environmental policies of the European Union, not as an Internal Market instrument.

- Local and regional authorities have a high interest in high quality waste management as they are responsible for the quality of life of their citizens.

- CEMR considers that the introduction of non democratically-controlled (see point 18 on use of comitology) end of waste criteria can weaken the EU waste sector and profit to some operators rather than to citizens, public authorities or the environment. CEMR is not convinced that such criteria will contribute to the establishment of a strong EU market for quality recovered products.
- CEMR calls for the selection of relevant waste streams and for the definition of the environmental and quality criteria applying to some end of waste products such as biowaste to be established through the legislative process.
- CEMR believes the current definition of waste is adequate. Problems in the waste sector would not be solved by narrowing the scope of the waste definition, but could be resolved by exempting, if deemed necessary, some recovery and recycling operations mentioned in annex IIB of the Waste Framework Directive from permit obligations. This is already possible with the existing framework directive, of which article 11 determines these exemption possibilities.

### **Political control (articles 5.2, 6.3, 11.2, 21, 25.3, 28, 36)**

19. Furthermore, the comitology is the procedure proposed to set these end of waste criteria. Recourse to comitology (article 36) appears in articles 5.2, 6.3, 11.2, 21, 25.3, 28. As set out, the comitology procedure will apply not just to technical matters, but also to policy decisions. This procedure sets the European Parliament and stakeholders on the side line and raises concern about the transparency of decisions. Since establishing end of waste criteria will de facto delimit the boundaries of the scope of waste legislation, CEMR strongly believes such decisions should be taken at a more political level. Democratic actors such as local and regional authorities should be consulted.

- CEMR finds that the draft directive puts forward an excessive use of the comitology procedure (article 36(2)). CEMR calls for a reduction of the role of comitology and for a wider consultation of political actors, particularly concerning decisions having strong implications for waste management and its quality.

### **Waste prevention (recital 6 and 18, articles 29-31, annex IV)**

20. CEMR would like to insist on the importance of waste prevention. We advocate a waste management strategy that puts prevention and reuse at the top, then, by decreasing order, recycling, energy recovery, and disposal as environmentally-friendly as possible.

As part of the debate on the Thematic Strategy, the European Commission has stressed, at many occasions, that waste prevention is often best achieved at local level. CEMR fully agrees with this statement. The comments sent by CEMR, and case studies on local waste prevention schemes provided by its members, to the Directorate General "Environment" in March 2005 make such a point.

21. It is unlikely that a uniform solution will be suitable at EU level. Local waste prevention and recycling schemes are often more effective and are vital to ensuring participation and acceptance on the local level. However, we do need common frameworks.

22. The Commission's recognition, in the 2003 Communication announcing the Thematic Strategy, that 'changing our behaviour' is key to the development of waste policy was welcome. Nevertheless, apart from the introduction of a EU definition of re-use, and the statement of an intention to support dissemination of best practises, the Strategy and the Directive do not develop these points as much as CEMR would have wished. CEMR advocates the development of tools for influencing consumer demand away from a culture of disposal (e.g. by promoting re-use, improving data and forecasting about product demand and usage, promoting repair and maintenance of products etc.).

23. CEMR welcomes the introduction in the Waste Framework Directive of a requirement on member states to establish waste prevention programmes. CEMR believes that, although prevention measures should rightly be decided at the national and local levels, EU common indicators on waste prevention would be very useful in order to move towards more common directions.

24. Economic instruments (recital 8, article 26, annex IV) can play an important role in terms of waste prevention. They also offer the advantage of promoting a level-playing field in the management of waste.

- CEMR welcomes the introduction in the Waste Framework Directive of a requirement on member states to establish waste prevention programmes and the introduction of the Annex IV proposing a list of prevention measures. Local and regional authorities should be invited to participate in the development of these programmes.
- CEMR would encourage the Thematic Strategy to also comprise elements for promoting life style changes. CEMR would like to propose such elements to be developed in comprehensive EU guidelines on waste prevention to be included in the Strategy's calendar of forthcoming actions.
- CEMR calls for the adoption at Community level of indicators allowing to monitor the achievements of the waste prevention programmes established at local, regional and/or national level.
- CEMR also would welcome the establishment of an EU system for the exchange of information and best practises on waste prevention at the local level.
- CEMR welcomes the call for an increased use of economic instruments in waste policies. However, further than recommendations, CEMR would welcome an approximation, or the setting of EU minimum rates, of some levies such as treatment and/or material taxes.

### **Definitions (recitals 11-13, articles 3 and 5)**

25. The EU still lacks a minimum level playing field in the waste sector. Furthermore, many of CEMR members express a strong interest in the creation of a strong internal market for recycled and recovered products. Common recovered and recycled product quality standards (e.g. on biowaste) would help reducing waste shipment and waste 'dumping' between EU countries.

26. The lack of clear definitions has led to an increase of rulings of the European Court of Justice and to the development of a case-by-case approach. But CEMR believes article 251 of the Treaty on the European Community should be the appropriate basis to set the framework of the Community waste policies. Clearer definitions are essential in order to move towards the establishment of a level playing field for a waste recovery internal market with strong environmental criteria, and providing a clear regulatory environment. Better definitions increase the policy and investment certainty for local and regional authorities. This is particularly important regarding incineration methods (so far all considered to be disposal, whatever their level of energy recovery and efficiency). Tighter definitions of recovery are needed to clarify what role incineration can play in energy recovery. Incineration can be an option for treating waste, provided it has high energy recovery standards.

27. Therefore CEMR welcomes the clearer definition of recovery, and the new definitions for recycling and collection. CEMR also welcomes the introduction of efficiency criteria that allows for a clarification of the distinction between recovery and disposal in the case of operations with high energy recovery. Nevertheless, energy efficiency thresholds should be set for all incinerators, not just municipal. Furthermore, as energy efficiency is often related to the average outside temperature, it is inadequate to set a single EU criterion: some flexibility should be introduced to take into account varying climatic conditions.

28. The classification of energy recovery should not be made on the sole ground of energy efficiency criteria. Indeed, for instance, increasing energy production may lead to increased polluting emissions. Environmental criteria (such as emission quantity and quality, and waste volume reduction) should therefore be introduced in the procedure as set out in article 5 (2).

- CEMR would like a definition of 'waste prevention' to be inserted in the waste framework directive
- CEMR advocates for a more stringent approach to be used in elaborating the calculation method for energy efficiency proposed under R1 and the introduction of environmental criteria.
- CEMR believes efficiency criteria should be set for all incinerators and co-incineration facilities.

### **Public services**

29. Some of CEMR members are concerned that the EU legislative framework might force some Member States, in which waste management falls within the responsibility of local and regional authorities, to give up this allocation of rights. CEMR believes that waste management is a service of general interest, which can be defined by the Member States, which also imposes specific public service obligations on the service provider to ensure that the public interest is met.

30. CEMR also strongly advocates local self-government and the freedom of local authorities to choose the way they want to organise the services they provide to their citizens for the disposal of their waste. This includes self-provision, public-private partnerships, contracting out, etc.

31. Therefore, we propose that a recital is inserted in the Waste Framework Directive stipulating that waste management is a service of general interest, similar to that contained in the Water framework directive (n° 15: 'the supply of water is a service of general interest').

### **Hazardous waste (articles 12-18)**

32. The merging of the Hazardous waste Directive with the Waste Framework Directive, as proposed by the European Commission, sees the provisions concerning the mixing of hazardous wastes become less stringent. Mixing hazardous waste with high hazardous concentration level with less concentrated product can decrease the overall concentration level of the mixed product and allows it to be declassified. Mixing should only be allowed in so far it improves the conditions under which the treatment is conducted (e.g. safety) and the environmental impact from the treatment of the mixture is lower than the sum of environmental impacts from the separate treatment of the fractions being mixed. Mixing ought to be banned if it is used to pursue a dilution policy.

33. The new provision under article 15 (1) allows a member state to treat waste on the list for hazardous waste as non-hazardous waste if it shows that the waste does not display the properties listed in Annex III.

- CEMR wonders if this new element is necessary and what purposes it will serve. Moreover, we would question what level of proof is required about the qualities of a certain type of waste and how will counter-evidence be weighed in the committee.
- CEMR is very concerned about such a development and calls on the European Parliament and the Council of Ministers to maintain strict rules applying to all concerned actors on the separation of hazardous wastes and of hazardous waste from other wastes, substances and products. A provision should be added to Article 16 stating that whatever the concentrations of hazardous substances, the mixture resulting from the operation must be treated according to the rules applying to hazardous waste.
- CEMR seeks clarification as regards article 15 (1)

## **Targets**

Recovery and recycling targets are a useful tool but only if a stable market for recovered products and material can be established. Targets are a useful driver of public demand and if combined with the appropriate collection facilities and information campaigns can be used as a central driver towards changing consumer demand. But targets must represent a realistic ambition and be determined in co-operation with all stakeholders, including local government.

As part of the development of life cycle approaches and the application of producer responsibility, material-based targets should also be explored further.

- CEMR is satisfied that the European Commission is still considering the idea of moving towards a more material-based approach, possibly using producer responsibility, for setting recycling targets.

## **Other points**

- CEMR welcomes the announcement by the Thematic Strategy of guidelines on applying life cycle thinking to the management of bio-waste and of guidelines on when by-products should or should not be considered as waste
- CEMR welcomes the announcement by the Thematic Strategy of a re-vision of the 'sewage sludge' directive
- CEMR welcomes the commitment of the Commission to combat sham recovery. However, CEMR has the view that the forthcoming publication of guidelines on certain provisions of the Waste Shipment Regulation ought to be supplemented by binding legal measures preventing such environmentally detrimental practices to take place.