



**COUNCIL OF EUROPEAN MUNICIPALITIES AND REGIONS  
CONSEIL DES COMMUNES ET REGIONS D'EUROPE**

**PROPOSAL FOR  
EU DIRECTIVE ON WASTE**

**CEMR POSITION  
SECOND READING**

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## KEY POINTS

CEMR :

- ⇒ Welcomes the addition of an environmental objective to the directive on waste
- ⇒ Calls for maintaining the existing waste hierarchy as the main structure for EU waste legislation whilst progressively drawing on the contribution that life cycle approaches may provide in establishing an innovative and flexible instrument;
- ⇒ Calls for the end-of-waste provisions 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, not comitology;
- ⇒ Calls for decisions on by-products to be taken in the light of the existing jurisprudence and of the interpretative communication adopted by the Commission;
- ⇒ 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 asks for efficiency criteria to be adopted, where relevant, for recovery operations to further clarify the distinction between recovery and disposal.
- ⇒ Calls for minimum standards applying to recovery operations not covered by the IPPC Directive 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;
- ⇒ 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.

## 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. 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.
3. Decreasing the environmental impacts of waste, notably through life cycle policies and by considering waste as a resource, is an important goal of waste policies. 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.
4. CEMR finds that the Common Position proposes an excessive recourse to the comitology procedure. Some of the proposed measures have a clear political dimension and can have significant implications on the scope of the EU waste legislation. They should therefore be adopted according to the co-decision procedure. This is one of the main points of concern of CEMR, as you can find them below.

In the following paragraphs, we comment on the outcome of the first reading of the proposal for Directive on Waste and conclude with proposed amendments to the Common Position of the Council.

## **CEMR comments**

### **Life-cycle approach and the waste hierarchy (*recitals 7, 28, 37 and 38, articles 1, 7, 10, 11*)**

5. CEMR supports the introduction of the life-cycle approach in waste legislation. There are undoubtedly waste prevention potentials in tackling material streams in products and production patterns at the source.
6. Life Cycle Instruments can become an important tool 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.
7. 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, life cycle instruments are mature enough to replace the current waste hierarchy as the main approach to waste management in the EU.
8. Products should be developed for re-use and recovery. Local authorities can make the link between citizens and producers. They can cooperate 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.
9. 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 tax-payer alone.
10. 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.
11. Waste management has been, until very recently, increasingly articulated around the EU directives on different waste streams and on

waste treatment, 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 “old” approach (end of pipe treatment) to the “new one” should be gradual and build upon a thorough assessment of the workability of life cycle instruments as a waste policy tool. CEMR would welcome the undertaking of more research on life cycle instruments in general and of LCAs in particular.

***CEMR welcomes the re-introduction of a fully-fledged hierarchy. This hierarchy ought to be considered as a general rule, accompanied by a possibility to depart from its priorities if life-cycle instruments legitimise such derogations.***

***CEMR would be in favour of a gradual introduction of the life-cycle approach into EU waste policies***

***CEMR has noted that the Common Position does not designate the bodies that will be competent to validate the results of assessments carried out through life cycle instruments. 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.***

⇒ *CEMR proposes to amend recital 34 and article 11, in order to maintain the waste hierarchy as the general rule for EU waste legislation, whilst progressively drawing on the contribution that life cycle approaches may provide in establishing an innovative and flexible instrument. The development of life-cycle approaches should be subject to political scrutiny and not part of the comitology procedure.*

### **End-of-waste (recitals 2, 5, 6 and 20, article 5)**

12. CEMR believes it can be useful, in some cases, to define in a more specific way how to distinguish between waste and non-waste. However, CEMR would like to point out that the introduction of provisions on end-of-waste has important implications for the scope of EU waste legislation, that CEMR would like to see remaining broad.
13. 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 end-of-waste through quality criteria.
14. 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 a recovery process, will be allowed to escape from waste regulations. CEMR warns against the

deregulation dimension of this initiative and against the environmental impacts that could result from it.

15. The work on end-of-waste currently carried out by the Joint Research Centre shows clearly that the environmental impact of using recycled and secondary aggregates is strongly influenced by the conditions of using the material. It also shows that defining conditions for using the materials would imply that control is needed to guarantee that the material is used accordingly. In other words, the relief from administrative burden seems very limited if environmental impacts are to be avoided.
16. Moreover, the provisions on end-of-waste, based on a case-by-case approach, potentially risk increasing 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 and in distortion of the terms of competition.
17. 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. The issue of waste management and its framing at European level should be above all considered as a service connected with health and environmental challenges that local and regional authorities have to administrate.

***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 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 II.***

***⇒ CEMR proposes to amend recital 20 and article 5 to ensure a harmonised implementation of waste legislation and converging interpretation and practices regarding the distinction between waste and non-waste. Since they affect the scope of waste legislation, end-of-waste criteria should be reserved only to treated waste and limited to products where clarification is indeed***

*needed. These criteria should be adopted according to the co-decision procedure.*

### **By-products (recitals 10, 20, 43, Article 4)**

18. By-products are the results of numerous and very varied production processes. The distinction between production residues that are waste and by-products that are not waste has in the past years mobilised the resources of the ECJ. Through a series of judgements, the ECJ has established a procedure and a number of criteria to be used when making this distinction. In recognition of the complexity of industrial reality, the ECJ has chosen to follow the procedure of case-by-case assessments. A similar approach is also recommended by the European Commission in its Communication COM (2007) 59 final on the Interpretative Communication on waste and by-products. This communication provides clear guidance for the determination on a case-by-case basis of whether a material or substance should be considered as waste or as a by-product. This guidance draws upon the jurisprudence established by the ECJ and makes use of the criteria used therein.
19. The Common Position departs from this approach and proposes a one-size-fits-all solution in its Article 4. Adopting provisions on by-products in the Directive has the consequence that the jurisprudence established so far becomes obsolete. In this context, it is worth noticing that the provisions proposed do not take on board one of the most important conditions established in the jurisprudence, which is that the holder must not discard or intend or be required to discard the material or substance.
20. Furthermore, the Common Position proposes the adoption in accordance with comitology of criteria to be met for specific substances or objects to be regarded as a by-product. CEMR believes that such measures affecting the scope of waste legislation should be adopted in accordance with the co-decision procedure.

*⇒ CEMR calls for decisions on by-products to be taken in the light of the existing jurisprudence and of the interpretative communication adopted by the Commission. CEMR calls therefore for the deletion of Article 4 of the Common Position.*

### **Political aspects and non-essential elements of the Directive (recitals 42 and 43, Articles 4, 5, 6, 24, 26 and 35)**

21. Comitology is the procedure proposed to adopt measures foreseen in numerous articles. As set out, the comitology procedure will not only apply 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 the establishment of end-of-waste criteria and for distinguishing between waste

and by-products will de facto delimit the boundaries of the scope of waste legislation, CEMR strongly believes such decisions should be taken at political level. Democratic actors such as local and regional authorities should also be consulted.

***CEMR finds that the Common Position proposes an excessive use of the comitology procedure (article 36(2)). CEMR calls for a limitation of the use of comitology to strictly technical issues and for a wider consultation of political actors, particularly concerning decisions having strong implications for waste management and its quality.***

⇒ *CEMR proposes to amend recital 43 and articles 24 and 35 of the directive in order to limit the use of the comitology procedure. Since they have important consequences in the field of waste policy, provisions regarding the scope of waste legislation, by-products and end-of-waste, minimum standards for treatment activities and classification of treatment operations listed in Annexes I and II, should indeed be submitted to political scrutiny.*

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

22. CEMR would like to insist on the importance of waste prevention. 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.
23. 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 objectives and frameworks.
24. CEMR welcomes the introduction in the Directive of a requirement on member states to establish waste prevention programmes. This represents a realistic goal rather than absolute prevention targets for which data and enforceability remain key barriers to implementation. CEMR believes that, although prevention measures should rightly be decided at the national and local levels, EU indicators on and objectives for waste prevention would be very useful in order to move towards more common directions.
25. Economic instruments 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 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 calls for the adoption at EU level of common objectives and 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 consideration at the Community level of the efficacy of economic instruments (e.g. levies, treatment and/or material taxes) and their role in incentivising changing behaviour.***

*⇒ CEMR proposes to amend Recital 34 to specify that the use of economic instruments ought to be part of the planning obligation.*

### **Definitions (Recitals 12, 13, 14, 22 and article 3, 4, 5 and 6)**

26. 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 would help reducing waste shipment and standard dumping between EU countries.
27. 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. 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.
28. 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.
29. The overall impact on greenhouse gas emissions and climate change should be integrated into any future framework, as should the need for energy from waste to play a role in realising the newly proposed targets on renewable energy production.

***CEMR welcomes the introduction of a definition of “waste prevention” in the directive.***

***CEMR advocates for consistency of definitions appearing in different pieces of waste legislation.***

***CEMR believes efficiency criteria should be set for all incinerators and co-incineration facilities for the municipal and non-municipal sectors.***

*⇒ CEMR suggest amending article 3 to ensure consistency of definitions between different legal acts. Moreover, it proposes to amend articles 8 and 35 to ensure the establishment of efficiency criteria to distinguish between recovery and disposal.*

**Hazardous waste (Recitals 10, 12, 31, 43, articles 6, 15,16, 17 18, 22, 31, 32 and annex III)**

30. 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. CEMR welcomes the strengthening in the Common Position of the provisions applying to hazardous waste.

31. The new provision under article 6 (3) 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 fears that diverging classifications of the same waste in different Member States will provide incentives for standard dumping.

***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.***

***CEMR asks for changes in the classification of hazardous waste as proposed in article 6 (3) to be allowed only when the waste list has been adapted.***

***CEMR asks for the exemption from permit requirements foreseen in Article 21 (b) to apply only to facilities recovering non-hazardous waste.***

*⇒ CEMR proposes to amend article 6 in order to ensure a harmonisation of classification of hazardous waste in all member states and the strict separation of hazardous wastes from other types of waste.*

*Furthermore, it suggests amending article 16 to introduce the notion of traceability of hazardous waste, which is a key element of a sound management of hazardous waste that ensures legal recourse in case of illegal practices.*

## Targets

32. 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. Targets represent a blunt instrument but have become a necessary driver of behaviour for all actors concerned. To be successful, the adoption of such targets must:

- **Give a clear signal** by indicating the direction towards which all involved actors should be heading
- **Provide for the necessary flexibility** to take into account the widely diverging starting points in Member States. In the framework directive, such targets shouldn't address specific waste streams. They should on the contrary be general and set the ambition level for the Community as a whole. Local authorities must not be forced to take on statutory duties for particular materials and products. This can hinder their ability to move towards a recycling society and moreover places the responsibility for the management of waste onto local government when greater emphasis must be placed on reducing the amount of packaging and other materials that enter the waste stream unnecessarily.
- **Be at the same time ambitious and achievable.** A mechanism should be established allowing for a rolling adaptation of these targets in the light of the progress made. Community level minimum targets must not replace the ability of local government to set their own targets to drive improvement.
- As part of the development of life cycle approaches and the application of producer responsibility, **material-based targets** should also be explored further.

⇒ *CEMR suggest amending recital 37 and article 26 to support the introduction of general, ambitious but realistic, recovery and recycling targets at European level*

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