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## FEAD POSITION PAPER

### REVISION OF THE WASTE FRAMEWORK DIRECTIVE Commission Proposal of 21 December 2006 *April 2006*

#### Key issues

##### ▪ Subject matter

FEAD welcomes the Commission's approach emphasizing in Article 1.1 that the main objective of the Waste Framework Directive (hereinafter: the "WFD") is **the reduction of 'the overall environmental impacts'** of the generation and management of waste. Nevertheless, Article 1 should be more specific on such a criterion and **reflect in a clearer manner the principles as stipulated in Article 174 of the EC Treaty:** *"Community policy on the environment shall contribute to pursuit of the following objectives: - preserving, protecting and improving the quality of the environment, - protecting human health, - prudent and rational utilisation of natural resources, - promoting measures at international level to deal with regional or worldwide environmental problems."*

FEAD supports the Commission's approach towards a **3-step waste hierarchy** (prevention – recovery – disposal) which should be used as a basis for environmental policy. FEAD considers that the 3-step hierarchy is the only workable tool allowing the waste hierarchy to be interpreted in a flexible manner as recommended in the Thematic Strategy on the Prevention and Recycling of Waste.

The third step, disposal, should also be included in Article 1.2. A Framework Directive on waste management should not be limited to some treatments but should address **all types** of waste management activities: collection, transport, recovery and disposal of waste.

##### ▪ Definitions

FEAD supports the Commission's approach not to modify the definition of waste. However, FEAD considers that **some definitions are missing** ('brokers', 'dealers', 'environmentally sound', 'prevention', 'transport', ...). For purposes of clarity and harmonisation, Article 3 of the Commission's proposal should **include all definitions** used in the proposed WFD, such as 'recovery operations' (currently in Article 5).

- **Ambiguous wordings leading to disputed interpretations**

A few statements will lead to interpretation problems. For example:

- How to demonstrate that the recovery or disposal of waste is carried out “without endangering human health”? (Article 7)
- How to demonstrate that “recovery is not possible”? (Article 6)
- Is it not an excessive obligation that “Member States shall ensure that all waste undergoes” recovery operations? (Article 5)

The wording of these articles needs a critical review in order to make them less categorical.

- **‘Polluter pays’ principle**

The ‘polluter pays’ principle which is stated in the current WFD (Article 15) has disappeared in the Commission proposal (Article 9) and the burden of the costs is shifted from the producer of the product to the ‘de-polluting’ actors.

FEAD urges that the ‘polluter pays’ principle and its implications are maintained and explicitly mentioned in the WFD.

- **Hazardous Waste / Waste Oils**

By merging the Hazardous Waste and Waste Oils Directives with the WFD, FEAD regrets that the Commission **weakens the specificities of the management of hazardous waste**. The existence of a Hazardous Waste Directive had its ‘raison d’être’ in the past and still has today. FEAD fears a lowering of environmental and safety standards for the sake of legislative simplification.

**FEAD therefore calls for maintaining the Hazardous Waste and Waste Oils Directives.**

Should there be a real justification to merge the Hazardous Waste Directive with the revised WFD, a dedicated and improved chapter addressing the specificities of the management of hazardous waste should be developed. The specificities of the management of waste oils should also be clearly addressed in this chapter.

- **Comitology**

FEAD considers that the comitology procedure is appropriate for **technical adaptation/developments** but not for political issues. Furthermore, most technical developments have political and economic implications. Therefore, FEAD is of the opinion that some decisions which, according to the proposal for the Revision of the Waste Framework Directive, would be made by comitology, should actually undergo a co-decision procedure.

In addition, for issues addressed by the WFD, the proposal itself should already provide a **clear framework for the proper functioning of the Comitology procedure** without leaving the definition of the below-mentioned issues up to the Commission (Article 36.3 of the proposal).

Such a framework should, at least, address the following:

- involvement of stakeholders
- procedure’s timeframe

- harmonised rules of procedure for all Comitology processes to be foreseen in the proposal
- detailed criteria providing a clear framework for the exercise of the discretionary powers granted to the Commission
- enforceability of the procedure
- right of access to procedural documents.

Member States and economic actors need **clarity and legal certainty**. Decisions about issues with important outcomes such as R/D criteria or end-of-waste must **not be postponed to a later stage** and left to the sole Commission's discretion.

In order to ensure a level playing field, the Commission should therefore set a clear **timeframe** which will avoid that national standards circumvent European standards.

#### ▪ **Recovery / Disposal**

As mentioned above, the definition of "recovery operations" in Article 5 **should be decoupled** from the requirement made to Member States to ensure that all waste undergoes recovery operations.

FEAD supports the inclusion of a **definition of recovery operations** which, however, would require clarifications. The lists of recovery and disposal operations (Annex I and II) are obsolete and some operations are now forbidden in the European Union (e.g.: incineration at sea). FEAD is aware of the fact that these lists refer to international conventions and can hardly be amended. Therefore, FEAD recommends the inclusion of a warning stating that the list do not match with today's situation in Europe. Moreover, the possibility to add new recovery operations into Annex II should be granted in the WFD.

#### ▪ **R1/D10**

FEAD supports the fact that municipal waste incinerators may be considered as recovery operations and that this status is determined by a criterion based on energy efficiency. However, FEAD requires that this criterion is accessible under the conditions prevailing in all EU Member States.

The proposed formula must be easy to apply and acceptable from a thermodynamics point of view. Moreover, it should take into account different local conditions without discriminating between the North and South of Europe and without discriminating more advanced flue gas treatment installations (i.e. leading to lower emissions).

Therefore, FEAD advocates for a simplified formula and threshold based on the energy efficiency performances which are achievable when using the Best Available Techniques (as given in Chapter 5 of the Waste-Incineration BRef). FEAD proposes to use a formula effectively based on the Waste-Incineration BRef which compares the effectively used energy (export and self demand, i.e. what is actually a substitution of resources) to the energy of waste.

The demands on energy efficiency must be fulfilled by all types of plants incinerating waste and not only to facilities dedicated to the processing of municipal solid waste.

## ▪ **End-of-Waste**

FEAD understands the need for a proposal to clarify the end-of-waste status in some cases. However, for the sake of environmental protection, the procedure must be strictly controlled.

The **general conditions** for ceasing to be a waste, which are stated in article 11.1 are not sufficient and must be clearly stated in the WFD itself.

Under the above mentioned conditions, the comitology procedure is appropriate for the setting of the **technical criteria** to be met by the material to be defined as end-of-waste.

The **list of eligible waste** streams (based on general conditions) is a political and not a technical issue. It must therefore be decided in a co-decision procedure.

FEAD advocates that the **general conditions** for ceasing to be a waste include that:

- the declassification of waste should not generate additional negative impacts for the environment
- it is limited to material recovery
- the recovered material will be effectively used.

## ▪ **Permits**

FEAD calls for all installations treating waste (recovery or disposal operations) to be subject to the same harmonised European rules (IPPC). FEAD requires that there is no permit exemptions for any kind of installation.

## ▪ **Level playing field**

The use of economic instruments by Member States should be monitored in order to ensure that they will neither distort competition nor European objectives.

The objective of a level playing field should encompass all waste treatment activities and not only some of them.

## ▪ **Scope**

The WFD does not address issues which are specific to **unexcavated contaminated soil**. Unexcavated contaminated soils should therefore be explicitly excluded from the scope of the WFD. The same should apply to man-made structures fixedly linked to such unexcavated contaminated soil as long as they remain steady (but not applicable to elements taken out from these structures).

FEAD requires that for the sake of environmental protection, substances from agricultural origin used for the **production of energy from biomass** should comply with the same rules as any other waste used to produce energy. Therefore, FEAD calls for their inclusion into the scope of the WFD.

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